

1 SUPERIOR COURT OF NEW JERSEY
2 LAW DIVISION - ATLANTIC COUNTY
3 Docket No. ATL-L-2648-15

4 IN RE: TALC-BASED POWDER : CIVIL ACTION
5 PRODUCTS LITIGATION : CASE NO. 300

6 - - -
7 TRANSCRIPT OF PLENARY HEARING
8 (VOLUME I)
9 - - -

10 PLACE: ATLANTIC COUNTY CIVIL COURTHOUSE
11 1201 BACHARACH BOULEVARD
12 ATLANTIC CITY, NEW JERSEY

13 DATE: MARCH 25, 2024

14 BEFORE: THE HONORABLE JOHN C. PORTO, P.J.Cv.
15 THE HONORABLE RUKHSANAH L. SINGH
16 U.S. DISTRICT COURT MAGISTRATE
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EXAMINATION

WITNESS: ERIK HAAS

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1 (Hearing commenced at 9:38 a.m.)

2 THE COURT: Good morning, everyone.

3 Please be seated. This is In Re: Talc-Based Powder
4 Products Litigation, MCL Case No. 300,
5 ATL-L-2648-15.

6 Can I have the appearance of
7 plaintiffs' counsel.

8 MR. POLLOCK: Good morning, Your
9 Honor. Jeff Pollock and Mike Sabo on behalf of
10 plaintiffs.

11 THE COURT: And defense counsel?

12 MR. BRODY: Good morning, Your Honor.
13 Steve Brody for Johnson & Johnson and LTL
14 Management, LLC, and with me this morning is Erik
15 Haas from Johnson & Johnson.

16 MR. HAAS: Good morning, Your Honors.

17 THE COURT: And I said, you know,
18 "plaintiff." I know this is a little different, but
19 this is plaintiffs' counsel moving, and the party
20 with the burden is defense counsel, Johnson &
21 Johnson.

22 How are we going to be addressing
23 questions? Is it going to be one attorney,
24 Mr. Brody and Mr. Pollock, or is it going to be a
25 number of attorneys making -- questioning witnesses?

1 MR. BRODY: Your Honor, on our side,
2 I am the only person who will be questioning
3 witnesses.

4 THE COURT: Okay. Mr. Pollock?

5 MR. POLLOCK: Same thing here, Your
6 Honor.

7 THE COURT: Okay. I just wanted to
8 be clear.

9 Mr. Golomb, I'm going to address your
10 matter towards the end. All right? Let me get
11 right into this today.

12 MR. GOLOMB: Yes, sir.

13 Just one thing, Your Honor. Michael
14 Stein is here and he is Mr. Conlan's attorney.

15 MR. STEIN: Thank you. Good morning,
16 Your Honor. Michael Stein, in case you need an
17 appearance, and my partner, Roger Plawker, of
18 Pashman Stein Walder Hayden on behalf of Mr. Conlan.

19 THE COURT: Thank you. A very good
20 morning to you. Thank you for entering your
21 appearances.

22 Anyone else wish to address the Court
23 in that manner? Okay.

24 Judge Singh, anything?

25 JUDGE SINGH: No, nothing from me.

1 THE COURT: All right.

2 Mr. Brody, would you call your first
3 witness.

4 MR. BRODY: Thank you, Your Honor.
5 The defendants call Erik Haas.

6 THE COURT: And I do have, and Judge
7 Singh has -- we received from Fox the exhibit book
8 that we have. We have seen these before, so I just
9 want to let everyone know we have the notebooks with
10 the exhibits in there.

11 MR. BRODY: Okay. That's Exhibits 1
12 through 18?

13 THE COURT: Yes.

14 MR. BRODY: Yeah, those are the
15 agreed-upon hearing exhibits that Mr. Pollock and I
16 have discussed, and, you know, we've agreed,
17 obviously, questioning may stray beyond those 18
18 exhibits.

19 THE COURT: Okay. And subject to any
20 objections, of course, right?

21 MR. BRODY: Of course.

22 Mr. Haas.

23 THE WITNESS: Yes, Your Honor.

24 MR. POLLOCK: Your Honor, before we
25 start, that last comment concerned me a little bit.

1 And obviously I realize, as questioning counsel, he
2 has latitude. I -- this is your courtroom. I'm
3 addressing two Courts. I am concerned about scope.
4 And I normally don't like to object over much,
5 because you don't want to stop the flow of the
6 witness's testimony and I respect that.

7 However, the issue here is whether
8 they should be disqualified based upon RPC 1.6.
9 There are a lot of other issues we could get into,
10 so I will be objecting on the basis of scope, is my
11 anticipation, especially in light of that last
12 comment.

13 I don't know if the Court wants to
14 address that, but that is of concern to me.

15 The other last issue is, we will
16 stipulate that Mr. Conlan had access and possession
17 to privileged information while he worked at J&J.
18 We don't doubt it. I don't know what that is, but I
19 have no doubt that he had it. If that moves things
20 along, we will stipulate to that fact right now.

21 THE COURT: Okay. And that's why I
22 said, subject to objections. I can't read --

23 MR. POLLOCK: Yes, sir.

24 THE COURT: -- and Judge Singh can't
25 read anyone's mind. We're not there yet. But I

1 want to keep the scope tight, and I don't want it to
2 go too far afield. I think it's a limited issue; is
3 there an actual conflict of interest here. We've
4 addressed it. And to the extent we go beyond those,
5 you may be hearing, without objection, you may be
6 hearing from Judge Singh and myself.

7 MR. BRODY: Of course. And our
8 questioning is very focused on the issue before the
9 Court. I will just say there are many more ethical
10 rules at stake here than simply Rule 1.6. And there
11 are multiple ethical rules that have been violated
12 here. We will talk about those in summation, after
13 witnesses testify, but this is much broader and a
14 than a simple 1.6 issue.

15 THE COURT: Okay.

16 Mr. Haas.

17 THE WITNESS: Yes, Your Honor.

18 THE COURT: Thank you for waiting for
19 us. Please raise your right hand. Tell me your
20 name and spell your last name.

21 THE WITNESS: Erik Haas, H-A-A-S.

22 - - -

23 ERIK HAAS, having been duly sworn,
24 was examined and testified as follows:

25 - - -

1 THE COURT: Thank you. You may be
2 seated.

3 THE WITNESS: Thank you, Your Honor.

4 THE COURT: Mr. Brody.

5 MR. BRODY: Thank you.

6 - - -

7 DIRECT EXAMINATION

8 - - -

9 BY MR. BRODY:

10 Q. Mr. Haas, I guess maybe we can -- I
11 know you're kind of behind the screen there, so I'm
12 going to move my left here so that I can see you a
13 little better.

14 Who are you employed by, Mr. Haas?

15 A. Johnson & Johnson.

16 Q. And what is your position at Johnson
17 & Johnson?

18 A. I am the worldwide vice president
19 responsible for litigation on behalf of Johnson &
20 Johnson.

21 Q. Can you tell the Court what your
22 responsibilities are in that role?

23 A. Yes. In that role, I oversee any
24 litigation brought by Johnson & Johnson, or brought
25 against Johnson & Johnson. I also actively

1 participate in the litigations, where necessary and
2 appropriate, and make appearances as required, and
3 I'm also responsible in connection with responding
4 to any external inquiries, either from Congress or
5 from the investor community for the external
6 environment.

7 Q. Who do you report to in that role?

8 A. I report to the general counsel.

9 Q. Okay. And the general counsel, I
10 understand, sits on the executive committee that is
11 the seniormost executives at J&J?

12 A. That is correct.

13 Q. In that role, do you ever see the
14 talc litigation?

15 A. I do.

16 Q. Does that include the litigation
17 pending in the State MCL in New Jersey and the
18 Federal MDL in Trenton?

19 A. Yes, it does.

20 Q. How long have you been overseeing the
21 talc litigation?

22 A. In terms of my oversight
23 responsibilities, I took over the actual oversight
24 responsibilities in March 2021, when my predecessor
25 in that role, Joseph Braunruether, retired from that

1 role.

2 I started at Johnson & Johnson in
3 November of 2020. At that time, I had -- well,
4 prior to that time, I had been outside counsel for
5 Johnson & Johnson on a series of litigations,
6 including those that involved talc litigation. So I
7 had some involvement with talc litigation going into
8 the role.

9 When I began working at Johnson &
10 Johnson as worldwide vice president in 2020, I was
11 involved in the talc litigation, but my oversight
12 responsibilities became -- started in March of 2021,
13 when Mr. Braunruether left.

14 Q. And just for the benefit of the
15 Court, you said that before you started at Johnson &
16 Johnson in November of 2020, you were outside
17 counsel for J&J. Where were you working at the
18 time?

19 A. I was partner at Patterson Belknap
20 Webb & Tyler. I represented Johnson & Johnson for
21 almost 30 years.

22 Q. All right. Are you familiar with the
23 work that James Conlan did for J&J as outside
24 counsel on the talc litigation?

25 A. I am intimately familiar with the

1 work that Mr. Conlan did.

2 Q. How did you become familiar with that
3 work?

4 A. When I started in November 2020, I
5 almost immediately was contacted by Mr. Conlan when
6 he learned that I had started in that role. And
7 when I mentioned Mr. Braunruether previously, he was
8 the associate general counsel. My position was to
9 transition into his position. We were combining two
10 roles into one. So it was clear at some point I
11 would be taking over the litigation of the talc
12 matters.

13 And he contacted me. I spoke with
14 him at that time. And then, during the entire
15 course of his tenure as outside counsel for Johnson
16 & Johnson, I communicated with him regularly. We
17 had weekly standing calls, which were standing calls
18 of the outside counsel teams that represented
19 Johnson & Johnson with respect to the talc matters.

20 And you can appreciate, because the
21 talc matter is the largest litigation risk of
22 Johnson & Johnson, we had a number of firms that
23 were representing the company in connection with the
24 talc litigation. A number of bankruptcy firms, a
25 number of the tort liability firms, and a number of

1 consulting firms.

2 So we would have weekly calls where
3 we would collectively discuss the strategy for
4 litigating and adjudicating the talc litigation. So
5 Mr. Conlan routinely participated in those calls.

6 I also had many, many, many
7 individual direct calls with Mr. Conlan during his
8 tenure as outside counsel for Johnson & Johnson.
9 And that ran from July of 2020 through March 28 of
10 2022. I had direct communications, direct emails,
11 calls, dinners, lunch. So we were continuously
12 communicating with respect to all aspects of the
13 cases at that time.

14 BY MR. BRODY:

15 Q. And you mentioned July of 2020, until
16 spring of 2022. Is that the period where Mr. Conlan
17 was outside counsel for J&J?

18 A. That is correct.

19 Q. And have you also reviewed billing
20 entries that Mr. Conlan submitted over the course of
21 that time period?

22 A. I did. So the period --

23 MR. POLLOCK: Objection, Your Honor.
24 Best evidence rule, hearsay, and speculation. These
25 documents have not been produced. He is not an

1 expert witness, he is not -- no summary has been
2 provided. 1006 does not apply, the best evidence
3 rule. I can't cross-examine him on what I don't
4 have. So this testimony regarding what is in the
5 billing records is pure, raw hearsay.

6 MR. BRODY: Your Honor, the question
7 was simply if he had reviewed the billing records.

8 THE COURT: I'll overrule the
9 objection.

10 MR. BRODY: Thank you.

11 THE COURT: You may continue.

12 THE WITNESS: Yes, I did review the
13 billing records for the entire time that Mr. Conlan
14 was engaged by Johnson & Johnson.

15 BY MR. BRODY:

16 Q. Did Mr. Conlan's representation of
17 Johnson & Johnson include work related to the cases
18 that are pending here in this New Jersey MCL?

19 A. Yes.

20 Q. Did it include work related to the
21 cases that are pending in the federal talc MDL?

22 A. Yes.

23 Q. Before I ask you specific questions
24 about the work that Mr. Conlan did for Johnson &
25 Johnson, I want to first say -- I'm going to be

1 asking you a series of questions. I don't want you
2 to reveal the substance of any of the analysis that
3 Mr. Conlan did, the substance of any analysis that
4 he was privy to, that he may have discussed with
5 you, with other lawyers at Johnson & Johnson, with
6 other outside counsel for J&J, because that is
7 privileged information.

8 So I do want you to be careful. I'll
9 remind you throughout that I'm only looking for
10 yeses and nos, and that I don't want to get into
11 that substance specifically.

12 A. Understood.

13 Q. You have described in certifications
14 submitted to this Court, both this Court and Judge
15 Singh have seen the types of issues that Mr. Conlan
16 worked on at a high level. And I want to talk about
17 some of those issues with you today while you're on
18 the stand.

19 First of all, I want to talk about
20 resolution of cases in the tort system. Can you
21 give the Court some general examples -- at this
22 point, not specific to the talc litigation -- but
23 some general examples of how cases in a mass tort
24 like the talc litigation are resolved through the
25 tort system?

1 MR. POLLOCK: Your Honor, objection;
2 scope.

3 MR. BRODY: It's a preliminary
4 question, Your Honor, which will very quickly lead
5 to a question about Mr. Conlan's work.

6 THE COURT: I'm going to overrule the
7 objection. But I think it does go beyond the scope.
8 If you're just giving context, if you're going to
9 question Mr. Haas with regard to context, I think --
10 candidly, I think Judge Singh and I can take, you
11 know, judicial notice with regard to how these cases
12 are settled, but we'll give you some latitude.

13 MR. BRODY: Thank you. I think it
14 will be helpful for the Court, Your Honor.

15 THE WITNESS: And I think I can move
16 things along by answering it, both in terms of what
17 typically happened and what Mr. Conlan specifically
18 was involved in.

19 In general terms, without getting
20 into privileged information, the talc litigation,
21 for the most part in the tort system is resolved
22 through litigation because, by the nature of what
23 the tort is, it is what is known as a latency tort.

24 So that you have claimants that
25 allegedly were exposed to talc powder currently, but

1 their disease state may not manifest for years. And
2 so those are the types of claims that typically
3 cannot be resolved through your standard class, or
4 other types of settlements that you would do in a
5 tort system.

6 So the main way to resolve cases in
7 the tort system is through litigation, and we
8 discuss those weekly on the calls that we have with
9 our collective outside counsel group, of which
10 Mr. Conlan participated and was an active
11 participant.

12 With that said, we also discussed
13 other potential ways to resolve matters outside of
14 the bankruptcy system and the court system. So that
15 would include individual settlement agreements,
16 portfolio settlement agreements, what is known as a
17 divisional merger followed by a spin-off, a
18 divisional merger followed by a bankruptcy, and
19 other types of what are known as structural
20 optimization transactions, where you cabin the
21 liability in an entity and then remove that entity
22 from the corporate hierarchy.

23 And each of those topics were
24 discussed, debated, critiqued, the strengths and
25 benefits of them, the risks of those, the pros and

1 cons of those were debated at great length during
2 the calls that we had on a weekly basis, and
3 individually with Mr. Conlan.

4 BY MR. BRODY:

5 Q. And so Mr. Conlan was a part of those
6 discussions?

7 A. Mr. Conlan was an integral part of
8 the outside counsel team.

9 Q. And did that include discussions --
10 and again, I want you to limit this. Do not
11 disclose the substance of it. But did it include
12 discussions of the advantages and disadvantages of
13 potential resolution through the tort system
14 compared to other options that may have been
15 available to Johnson & Johnson?

16 A. Yes. It involved the --

17 MR. POLLOCK: Your Honor, which
18 entity, as to whether this is Imerys or LTL, because
19 I don't know what context this arose in and the
20 witness has not clarified where this discussion
21 occurred. I have no documents to review. So I
22 think I'm entitled to at least know --

23 THE COURT: Fair question.

24 MR. POLLOCK: -- which bankruptcy is
25 it related to.

1 MR. BRODY: Your Honor, the question
2 was not specific to any particular bankruptcy. It
3 was a question about whether Mr. Conlan was part of
4 discussion of the advantages and disadvantages of a
5 resolution through the tort system, compared to all
6 of the other options that were potentially on the
7 table at Johnson & Johnson.

8 THE COURT: Can you limit that to
9 LTL, Johnson & Johnson.

10 MR. BRODY: Let me ask Mr. Haas the
11 question.

12 BY MR. BRODY:

13 Q. Was that -- were those comparisons
14 limited to Imerys?

15 A. No, they were not limited to Imerys
16 or LTL. So it wasn't limited to where Johnson &
17 Johnson and its affiliates were third-party debtors
18 in the Imerys context or when we were a debtor in
19 the LTL bankruptcy.

20 Quite to the contrary, from the very
21 first conversation I had and throughout the entire
22 time Mr. Conlan was representing Johnson & Johnson,
23 we had repeated discussions, many, many discussions
24 over whether and to what extent the cases should be
25 resolved in bankruptcy, or completely outside of

1 bankruptcy in a number of different ways, through
2 what he referred to as structural optimization, but
3 involved what I had mentioned earlier, divisional
4 mergers that could be followed by spinoffs, where
5 basically you sell the entity that takes on the
6 liability, or divisional mergers that would be
7 followed by bankruptcy, or combinations of the both.

8 And that with the other aspects of --
9 speaking in very general terms, it didn't
10 necessarily mean one or the other. There could have
11 been combinations in terms of you could cabin some
12 liability, you put other liabilities into a
13 bankruptcy. It could depend upon the disease state,
14 for example, mesothelioma versus cancer claims.

15 So each of those iterations were
16 mapped out and were discussed with respect to what
17 would the benefits be of one versus the other; when
18 would you want to do one versus the other; how would
19 you go about doing one versus the other; who would
20 you approach to do one versus the other. So those
21 were the types of conversations we had, without
22 getting into the specifics.

23 Q. And when you say "who would you
24 approach," can you tell the Court what you mean by
25 that?

1 A. There are just a few of the counsels
2 that were involved in these discussion sitting in
3 the courtroom today. If we were to bring them all
4 in, we would need a courtroom ten-fold the size of
5 this. There were many, many counsel involved in the
6 talc litigation, which reflects why we had so many
7 firms involved.

8 And so part of the strategic issue
9 was, who do you approach and when. Each of the
10 different litigations had someone that was, or a
11 group of individuals who were taking lead. So, for
12 example, the Imerys bankruptcy had a torts claimants
13 committee, which is a series of ten, about ten
14 individuals that were appointed by the U.S. Trustee.
15 Each of those were represented individually by
16 counsel.

17 Those counsel -- those individual
18 claimants were appointed by the U.S. Trustee to
19 represent that class of claimants in the Imerys
20 case. And so those counsels took the lead in that
21 particular situation.

22 Same thing in LTL. In the MDL, you
23 had a different set of leadership. The MCL,
24 different. A lot of it overlapped. There was a
25 great deal of overlap. For example, Beasley Allen

1 had a primary role, I would say, in each one of
2 those constituents. But depending upon which group
3 or which litigation you were dealing with, that
4 then, in turn, dictated who were the individuals
5 that would be leading.

6 So, strategically, you had to figure
7 out who to speak to first. And, for example, when
8 you're talking bankruptcy, you also had another
9 group of individuals, those that represented the
10 future claim representatives, right, the future
11 claimants, because you have classes of current
12 claimants and futures, and then you have different
13 classes of creditors. So you have to figure out how
14 to go about addressing those.

15 So it was a multidimensional spectrum
16 of claimants and interests and counsel that
17 represented them. So, strategically, there were
18 many calls that had to be made in order to assess
19 who to approach and when.

20 Q. And do those assessments inform
21 Johnson & Johnson's decisionmaking on the talc
22 litigation?

23 A. Yes.

24 Q. And was Mr. Conlan privy to how those
25 assessments impacted Johnson & Johnson's decisions

1 in the talc litigation?

2 A. Yes.

3 MR. POLLOCK: Objection, Your Honor.

4 How do I conceivably know what Johnson & Johnson
5 considered when there's an entire board of people,
6 the general counsel is involved. I've got no
7 records. I have to object -- again, object on
8 hearsay. I have no basis with which to know what
9 Mr. Conlan's role was.

10 THE COURT: Mr. Brody.

11 MR. BRODY: Your Honor, this witness,
12 we've established, was in charge of the talc
13 litigation. I can ask him a predicate question.

14 BY MR. BRODY:

15 Q. Do you -- do you have firsthand
16 knowledge of whether these assessments informed the
17 Johnson & Johnson decisionmaking on the talc
18 litigation?

19 A. I have absolute knowledge, because it
20 was my decision. I made the decisions with respect
21 to talc litigation. If there's any issue that we
22 would like to discuss today as to ultimately why it
23 was made, the buck stops here.

24 Q. All right. And so, going back to my
25 question, because I don't know I got your answer

1 before the objection was made.

2 Did the assessments that you've been
3 speaking about inform Johnson & Johnson's
4 decisionmaking on the talc litigation?

5 A. Yes, they did.

6 Q. And was Mr. Conlan privy to not only
7 those assessments but how those assessments informed
8 Johnson & Johnson's decisionmaking?

9 A. Yes. And in that regard, I would say
10 he was very, very active and had very strong points
11 of view and communicated them very strongly. Not
12 only to me, but to the outside counsel group.

13 Q. Would you ever share those
14 assessments with opposing counsel in the talc
15 litigation?

16 A. Absolutely not.

17 Q. Why not?

18 A. If I were to share the internal
19 deliberations with both inhouse counsel and outside
20 counsel with our adversaries, it necessarily would
21 provide us with a strategic disadvantage. It was
22 would be an unfair advantage, because the other side
23 would understand what we see as the risk/benefits,
24 the pro/cons, the advantages and the disadvantages.
25 It would present an unfair advantage. And I think,

1 in my view, it would fundamentally undermine the
2 adversarial process and completely contravene all
3 interest in justice.

4 So, no, I do not believe it would be
5 appropriate, and I mean under any circumstances, to
6 communicate those confidential communications, or
7 the nature of what we were discussing to our
8 adversary.

9 Q. You heard Mr. Pollock in one of his
10 objections mention the Imerys bankruptcy. I want to
11 ask you just a few questions about that.

12 Are you familiar with the bankruptcy
13 proceedings involving Imerys?

14 A. Yes.

15 Q. And very briefly, can you explain to
16 the Court what the Imerys bankruptcy is?

17 A. Imerys was a company that extracted
18 and mined talc in the United States and supplied a
19 number of companies with that talc, including
20 Johnson & Johnson for Johnson & Johnson's Baby
21 Powder.

22 In I believe 2019, Imerys filed a
23 Chapter 11 case because it was facing talc claims.
24 Those talc claims were the same talc claims for the
25 same harm that Johnson & Johnson was facing, because

1 those claims were asserted against both Johnson &
2 Johnson and Imerys as a supplier.

3 As a consequence, in that bankruptcy,
4 Johnson & Johnson had indemnification claims against
5 Imerys, Imerys had indemnification claims against
6 Johnson & Johnson. But it was -- they were the same
7 claims.

8 Now, Imerys was the debtor that filed
9 a Chapter 11 case, and because of the interest in
10 Johnson & Johnson in ensuring that there's a fair
11 determination and adjudication of those claims,
12 whether through bankruptcy or not, Johnson & Johnson
13 participated in the Imerys bankruptcy, and both as a
14 -- in instances as an objector, and in other
15 instances as a third-party debtor, because under the
16 bankruptcy code there are rights that are attributed
17 to third-party debtors, including the ability to
18 participate in a plan for the resolution of the
19 bankruptcy and for the complete release of the talc
20 claims.

21 Q. Was Mr. Conlan involved in issues
22 related to the Imerys bankruptcy when he was
23 representing Johnson & Johnson as its outside
24 counsel?

25 A. Yes, he was intimately involved. He

1 commented quite extensively. He was involved in
2 drafting and commenting on submissions to the
3 bankruptcy court in connection with the Imerys
4 bankruptcy.

5 Q. And --

6 A. He did everything an outside counsel
7 would do with respect to the Imerys bankruptcy.

8 Q. Are you familiar with the tort
9 claimants committee in the Imerys bankruptcy?

10 A. Generally. And I think I mentioned
11 this earlier, the Imerys tort claimants committee is
12 a committee of, I believe, if ten claimants, ten or
13 11 claimants that were appointed by the U.S. Trustee
14 in order to represent that class of tort claimants.

15 Each of the claimants is represented
16 by a firm, a counsel. And so that outside counsel
17 for those claimants -- well, the counsel for the
18 claimants were the representatives of those torts
19 claimants in connection with the bankruptcy.

20 Q. And are you aware of whether
21 Mr. Conlan was privy to the development of Johnson &
22 Johnson's negotiating strategy for resolution of
23 talc claims with the tort claimants committee, or
24 the TCC, in the Imerys bankruptcy?

25 A. He was actively involved and he

1 actively participated in communications with the TCC
2 for Imerys, which included Beasley Allen as one of
3 the firms that represented the -- a claimant on the
4 torts claimants committee, and Beasley Allen took a
5 lead role with respect to the torts claimants
6 committee.

7 And in addition to the discussions
8 with the torts claimants committee, Mr. Conlan had
9 conversations with the counsel for the debtor,
10 that's Jeff Bjork of Latham Watkins, and he had
11 conversations with counsel for the future claims
12 representative, that was James Patton, to the best
13 of my recollection.

14 Q. Can you explain to the Court what the
15 role of the future claimants representative is or
16 was in the Imerys bankruptcy?

17 A. Yes. So in the bankruptcy setting,
18 when you're dealing with a mass tort like this --
19 not all mass torts have this characteristics, but it
20 has -- the future claims for the reasons I stated
21 earlier, because the latency period goes on for some
22 period of time. You may have claimants today who
23 have been exposed, but have not yet incurred any
24 disease state. As a consequence, their claims do
25 not really ripen until such a time as they have that

1 disease state.

2 So those claims could come at some
3 point in the future, notwithstanding the bankruptcy
4 is designed to get a contemporaneous resolution.

5 So, in connection with bankruptcy,
6 there are provisions and rules that allow for the
7 resolution of both current and future claims, but in
8 order for it to be fair, those future claimants have
9 to be represented by their own counsel. And that's
10 the future -- and an expert, and that's the future
11 claims representative, and the future claims
12 representative counsel.

13 Q. In his communications with the TCC
14 and the future claims representative in the Imerys
15 bankruptcy, was Mr. Conlan negotiating on behalf of
16 J&J?

17 A. He was.

18 Q. And were you communicating with him
19 throughout that period regarding J&J's positions in
20 those negotiations?

21 A. Extensively.

22 Q. And did that include discussion of
23 what J&J could and could not do, would and would not
24 do to resolve the cases that are pending here in New
25 Jersey and in the federal MDL?

1 A. Yes, it did, as well as the timing,
2 who to speak with and when, the amount of claims --
3 the amount to which we would be willing to pay to
4 resolve those claims, both on an aggregate basis and
5 a per claim basis, because oftentimes the settlement
6 could depend on both, because the per claim basis
7 also oftentimes requires an assessment of what were
8 the anticipated criteria of the future claimants in
9 terms of age, disease state, severity of disease
10 states, length of exposure.

11 All of those factors would go into
12 assessing how much on a per claim basis would be or
13 should be made available to the future claimants, as
14 well as the current claimants. And that was all
15 built into what's called the settlement matrix. And
16 so not all settlements use the settlement matrix,
17 but as part of our discussions, that was one of the
18 considerations.

19 Q. And did Mr. Conlan and his team,
20 during that period, engage in significant work
21 related to evaluation of settlement matrices that
22 were being considered in connection with resolution
23 of the talc claims?

24 A. To the extent --

25 MR. POLLOCK: Your Honor, can I get

1 clarification. When it says "and his team," the
2 question here is what did Mr. Conlan do. I don't
3 know who the team is. Is the team everyone else who
4 is working on the case, like Weil Gotshal and Jones
5 Day. I don't know -- I need to know what Mr. Conlan
6 was doing specifically, Your Honor.

7 THE COURT: That's a fair objection.

8 MR. BRODY: See, and I can clarify,
9 Your Honor. That's fine. So let me just limit it
10 to Mr. Conlan.

11 BY MR. BRODY:

12 Q. Was Mr. Conlan engaged in the
13 evaluation of settlement matrices that were being
14 considered as part of the potential resolution of
15 the cases in the MCL and the MDL?

16 A. Yes, he was extensively involved and
17 he touted his vast experience in the mass tort
18 space.

19 Q. Did that require that he have access
20 to confidential Johnson & Johnson information?

21 A. It did.

22 Q. And did he participate in privileged
23 and confidential discussions of -- you know,
24 including evaluation of proposals that may have been
25 going back and forth involving these settlement

1 matrices?

2 A. Yes, he did. He had extensive
3 communications with the team and strident opinions
4 on the issues.

5 Q. Are you familiar with TDP values in
6 the Imerys bankruptcy?

7 A. Tort distribution procedures, yes.

8 Q. Was Mr. Conlan involved in evaluation
9 of --

10 A. Or trust distribution.

11 Q. Trust distribution. Yes.

12 Was Mr. Conlan also involved in
13 evaluation of proposed TDP claim values in the
14 Imerys bankruptcy?

15 A. Yes, he was. He commented
16 extensively on that, as well.

17 Q. And was he part of the J&J team --
18 and when I say "J&J team," I'm talking about the
19 inhouse counsel who were involved, as well as his
20 co-counsel from the other firms representing J&J,
21 was he involved in that evaluation?

22 A. Yes. He participated in the calls
23 where he deliberated on those issues, he commented,
24 critiqued, debated each of those issues extensively.

25 Q. Did that include an evaluation of the

1 proposed claim values and whether Johnson & Johnson
2 believed they were too high, too low, without
3 getting into specifics?

4 A. Absolutely. And it goes to what I
5 said earlier, both the aggregate amount and the per
6 claim amount.

7 And if I may just digress for a
8 minute here. That was important generally speaking
9 because Johnson & Johnson at court does not believe
10 these claims have any merit. And this is all a
11 matter of record that came out in the bankruptcy, so
12 I not revealing any confidence at this point.

13 But we elected to enter into
14 settlement agreements because the facts that are now
15 a matter of the record in the LTL bankruptcy
16 demonstrated, and notwithstanding that we were
17 winning the vast majority of cases, to try the cases
18 that existed at the time the first bankruptcy was
19 filed would have taken 3,800 years, and the
20 calculation of the expenses, not the judgments, but
21 the expenses that it would have cost in order for us
22 to get a resolution over that time frame was \$190
23 billion.

24 So in the best interest of our
25 constituents, our patients, our doctors, our nurses,

1 our employers -- our employees, our investors, a
2 settlement was in the best interest of all parties,
3 and, in particular, with respect to the claimants,
4 too. Because the claimants had come to the cases
5 with a view that there was some harm that they were
6 caused by our product, because that's what they were
7 advised by counsel on the other side of the table,
8 and this was the only way, if we were to enter into
9 the settlement agreement, it was the only way to get
10 funds to those claimants during their lifetime. And
11 it's the only way to do that while you're also
12 reserving amounts for the future claims that exist.

13 Because at the time we were
14 contemplating these bankruptcies, the entity that
15 actually owned this risk, it was Johnson & Johnson
16 Consumer, Inc., was in the red. That company, in
17 and of itself, could have gone into bankruptcy,
18 before this so called two-step, before the
19 divisional mergers, that company could have gone
20 into bankruptcy because in 2020, it was in the red
21 solely because of the talc claims.

22 So we contemplated these settlements
23 because it was in the best interest, in our view, of
24 all constituents.

25 THE COURT: Let me interrupt. You

1 know, keeping us focused. So we have a team of
2 lawyers, and ten times the amount of this courtroom,
3 referring to the team. Where does Mr. Conlan,
4 Mr. Haas, fit in this team? Is there a hierarchy of
5 attorneys? You know, I want to get us back to --
6 and I appreciate the context, but where does
7 Mr. Conlan fit in this team of outside counsel? Is
8 there a hierarchy?

9 THE WITNESS: I think you could look
10 at some of his public statements, including a recent
11 one in the November 2nd --

12 THE COURT: The Bloomberg article?

13 THE WITNESS: Yeah, as to what he
14 touted himself to be, which was the premier
15 bankruptcy expert that ran Sidley's bankruptcy
16 department and mass tort department for 20-some odd
17 years and had more knowledge in this area in the
18 resolution of the mass torts than anyone else on the
19 planet.

20 So he came to the team with that
21 perspective, and communicating that expertise, and
22 he brought that to these calls.

23 And when I say he was actively
24 involved and he had strong opinions, that is why.
25 So on every issue that would come up, like which is

1 the right forum, when should we bring a claim, who
2 should we approach, how should we structure it,
3 Mr. Conlan would bring his expertise to that matter
4 and give his very strident opinions on what should
5 be done, and critique what were the views of other
6 very learned counsel, whether Weil Gotshal, Skadden,
7 or the other firms, Orrick. We had myriad
8 significant firms on these cases.

9 So when you ask for his role, he was
10 a central figure in strategic decisionmaking in
11 connection with this team, throughout the entire
12 process when he was -- and the entire time frame he
13 was engaged.

14 BY MR. BRODY:

15 Q. And Mr. Haas, when you talk about the
16 team and these weekly calls, I assume you didn't
17 have all of your talc litigation outside counsel on
18 these weekly calls?

19 A. No, because we had counsel throughout
20 the country. There are cases that are tried
21 literally in almost every state in the country. And
22 so we have individual tort local counsel throughout.

23 But we had a team that was comprised
24 of the firms that worked on the large matters, the
25 MDL, the MCL, and coordinating counsel, and

1 representatives of the litigants throughout the
2 country.

3 So what we tried to bring together is
4 every perspective, so that when we're trying to
5 decide which is the best avenue to resolve the
6 biggest liability for Johnson & Johnson, we would
7 have the impact from counsel representing all of the
8 different constituents.

9 Q. And you said Mr. Conlan was a member
10 who joined those weekly calls.

11 A. Yes.

12 Q. And would you consider that to be the
13 core team that was evaluating these issues?

14 A. Yes, the core team of premier counsel
15 that were bringing to bear the best advice they had
16 in order to help us resolve these matters, both
17 through litigation or resolution outside of
18 litigation.

19 Q. And who else at Johnson & Johnson --
20 and I'm referring to inhouse counsel now, was
21 involved in those calls?

22 A. So there was my -- the main
23 participants in the calls from the Johnson & Johnson
24 litigation team were myself, Joe Braunruether,
25 Andrew White, and John Kim.

1 Q. And you mentioned Mr. Braunruether
2 was the worldwide head of litigation immediately
3 preceding you?

4 A. His title was actually the associate
5 general counsel. There was a separate worldwide
6 head vice president at that time. When I started,
7 the two roles were combined.

8 Q. Okay. And Mr. White, what is
9 Mr. White's role at Johnson & Johnson?

10 A. Mr. White is currently the product
11 leader, the group product leader for product
12 liabilities.

13 Q. Okay. And what about Mr. Kim?

14 A. Mr. Kim held that role before
15 Mr. White.

16 Q. Okay. So these are senior members of
17 the law department at Johnson & Johnson?

18 A. Yes.

19 Q. The analysis that we were talking
20 about of claim values, of settlement matrices, do
21 you consider the analysis that Mr. Conlan was
22 involved in to be privileged and confidential?

23 A. Absolutely.

24 Q. And would you ever share that with
25 your opposing counsel in the talc litigation?

1 A. Absolutely not.

2 Q. All right. You mentioned that you
3 spoke to Mr. Conlan at various times about
4 structural optimization, right?

5 A. Uh-huh.

6 Q. Did you consider your discussions
7 with him to be privileged and confidential?

8 A. Yes, I did.

9 Q. And was it discussed within the
10 context of evaluating different options to resolve
11 the cases that are pending here in this MCL and in
12 the federal MDL?

13 A. Yes. And to be clear, that is what I
14 considered privileged. The concept of structural
15 optimization, per se, is like the concept of
16 bankruptcy, right; it's a concept. Within that
17 there are iterations and various different ways to
18 go about doing it.

19 Structural optimization is just
20 basically the concept of taking liability and
21 putting it into a particular entity within your
22 organization. Then there's many different things
23 you can do with that. You can go to bankruptcy with
24 it, you can spin it off, you can spin part of it
25 off. So there's many different ways you can

1 structurally optimize.

2 One of the things you can consider as
3 a goal is to actually continue to hold onto that
4 enterprise, but just not make it part of your
5 consolidated financial statements.

6 So it's a tool, and that tool has
7 many iterations. But what is important are the
8 strategic considerations of how do you go about
9 doing that, with whom and at which amounts you set
10 as a valuation that you're going to need to fund
11 that enterprise in order to make it a non-fraudulent
12 transfer, when you put the liabilities in there. So
13 there are many, many strategic considerations, all
14 of which have risks and benefits, and pluses and
15 minuses, because it's also in the context of a broad
16 err question of "are you going to get comprehensive
17 resolution.

18 So even if you do that outside of a
19 bankruptcy, if you do not have a bankruptcy piece to
20 that, you will never get comprehensive and final
21 resolution absent there being a portion that is
22 resolved through bankruptcy that addresses future
23 claims. Because in structural optimizations, you
24 will not know until those future claims come in what
25 is the magnitude of those claims.

1 Q. Was Mr. Conlan involved in
2 discussion, privileged and confidential discussion
3 of methods to estimate the potential value of those
4 future claims?

5 A. Yes. Both at the aggregate level and
6 at the per claim level, and the criteria that go
7 into how you set your per claim amounts, as well as
8 what exceptions there may be to that analysis. So
9 what circumstances would the values be increased and
10 in what circumstances would the values be decreased.

11 Q. And was that for both the ovarian
12 cancer claims and the mesothelioma claims?

13 A. Yes, sir.

14 Q. And was he involved in analysis of
15 legal arguments with the potential to impact the
16 number and viability of future claims?

17 A. Yes.

18 Q. Did the inhouse team share with
19 Mr. Conlan its views on whether the passage of time
20 might increase or decrease the value of those future
21 claims?

22 A. Absolutely.

23 Q. Whether it might increase or decrease
24 the amount that Johnson & Johnson would be forced to
25 pay to get the finality that you talked about?

1 A. Yes.

2 Q. Do you consider that to be privileged
3 and confidential?

4 A. I did, and I do.

5 Q. Was he involved in discussions of how
6 the risk of trial activity for ovarian cancer and
7 mesothelioma claims would change or would not change
8 over time?

9 A. Yes.

10 Q. Do you consider that to be privileged
11 and confidential?

12 A. I do.

13 Q. Was Mr. Conlan also involved,
14 shifting gears slightly, in privileged and
15 confidential discussion of the LTL Management, LLC,
16 bankruptcy filing?

17 A. Yes.

18 MR. POLLOCK: Objection, Your Honor.
19 Can I get a point in time, please? This could be
20 important.

21 THE COURT: I agree.

22 Can we have some clarity with regard
23 to some time frame, Mr. Brody?

24 /

25 /

1 MR. BRODY: Sure. I'll just ask
2 Mr. Haas.

3 BY MR. BRODY:

4 Q. During what time period was he
5 involved in discussions of -- why don't we start
6 with before the bankruptcy filing. If I recall
7 correctly, the bankruptcy filing was in October of
8 2021, right?

9 A. October 13, 2021.

10 Mr. Conlan was involved in all the
11 discussions regarding the potential for bringing a
12 bankruptcy in which Johnson & Johnson was the
13 debtor, which essentially led to the filing of the
14 LTL bankruptcy. So that's the time frame, 2021,
15 when we were first negotiating in attempt to get a
16 resolution to the Imerys bankruptcy as a third-party
17 debtor. When that failed, then the consideration
18 was, was there an option to file our own bankruptcy.

19 And so those deliberations continued
20 through 2021, up until October '21. Mr. Conlan was
21 intimately involved in all of those discussions, in
22 all the considerations that went into those, and
23 ultimate determination. And thereafter, he was
24 involved in the advice, strategy, deliberations and
25 communications regarding how to effectuate that

1 bankruptcy, once filed.

2 Q. And did that include discussions with
3 you?

4 A. Absolutely, it did. Direct
5 communications, email communications, communications
6 on group calls, and, you know, one-on-one
7 conversations, dinner conversations, lunch
8 conversations.

9 Q. Were Mr. White and Mr. Kim involved
10 in those conversations?

11 A. Absolutely.

12 Q. What about the rest of the core
13 outside counsel team that you spoke about?

14 A. Yes.

15 Q. Did that include evaluation of the
16 potential value of pending talc claims?

17 A. Yes, they did, both the aggregate
18 level and per claim level.

19 Q. And potential number of future
20 claims?

21 A. Yes.

22 Q. And how the bankruptcy filing
23 compared to other resolutions, potential resolutions
24 that were available to J&J? And again, these are
25 all just I want a yes or a no without any substance.

1 A. Significant discussions in that
2 regard.

3 Q. Of how Johnson & Johnson viewed the
4 bankruptcy option compared to the structural
5 optimization?

6 A. Yes. And in connection with
7 variations of the concept of structural optimization
8 in different contexts.

9 Q. Now, shortly after, a few months
10 after the October 2021 LTL filing, Mr. Conlan left
11 Faegre Drinker, right?

12 A. I'm sorry, can you ask that question
13 again.

14 Q. Yeah, sure. End of February of 2022,
15 Mr. Conlan left Faegre Drinker, right?

16 A. I learned of Mr. Conlan's departure
17 in an email on, I believe it was March 28th, '22,
18 2022.

19 Q. Okay. And what did you learn at that
20 time?

21 A. Mr. Conlan told me that he was
22 resigning from Faegre Drinker and starting a
23 business called Legacy Liability, or something like
24 that.

25 Q. Okay. Was this while the LTL

1 bankruptcy was still pending?

2 A. Yes.

3 Q. Did J&J have support for resolution
4 of its talc liabilities through the LTL bankruptcy
5 process?

6 A. I'm sorry, can you ask that question
7 again.

8 Q. Sure.

9 Did J&J have support from claimants
10 for resolution of its talc liabilities --

11 A. Yes.

12 Q. -- through the LTL bankruptcy
13 process?

14 A. Yes. So Johnson & Johnson had the
15 support of the vast majority of counsel -- let me
16 state that differently.

17 Johnson & Johnson had support for
18 counsel representing the vast majority of the
19 claimants in the LTL bankruptcy. This is a matter
20 of record; that in the hearing that was had in the
21 summer of 2023, before Judge Kaplan in the
22 bankruptcy court, one of questions he had was: What
23 was the support for the bankruptcy from the
24 claimants at that time, before a vote was taken, and
25 what was the opposition to the bankruptcy from the

1 clamant's perspective. He asked for evidence to be
2 submitted and he made findings in that regard.

3 The evidence in that regard showed
4 that counsel representing 70 percent of the
5 claimants were supporting our bankruptcy and 20
6 percent were opposing the bankruptcy.

7 Q. Can you tell me, you know, was
8 Mr. Birchfield opposing it?

9 A. Mr. Birchfield led the small minority
10 of law firms that opposed at the bankruptcy.

11 Q. Do you know why?

12 MR. POLLOCK: Your Honor, there's
13 ovarian cancer claims and there's also mesothelioma
14 claims.

15 THE COURT: Limit it to ovarian
16 cancer.

17 MR. POLLOCK: Well, the problem is I
18 don't know which group we're talking about. And
19 when he says the majority, I don't know if -- I can
20 deal with it on cross, if you like. But frankly, it
21 seems to me that if you're going to say 70 percent,
22 I'd like to know how that 70 percent was gotten.

23 THE COURT: And I think that's a fair
24 question and objection. So I'll sustain the
25 objection.

1 Can you focus us back in?

2 MR. BRODY: Sure, I can -- I can ask.

3 BY MR. BRODY:

4 Q. Mr. Haas, why don't you explain what
5 you were referring to with the 70 percent?

6 A. So, it's both. The evidence in the
7 record --

8 THE COURT: Meso and ovarian.

9 THE WITNESS: Yes. In terms of
10 numbers, there are far, far, far more ovarian cancer
11 claims than there are mesothelioma claims. But the
12 analysis that the Court requested and that we have
13 done pertain to both.

14 BY MR. BRODY:

15 Q. What was the -- and the question I
16 had asked you before that was: Do you know why
17 Mr. Birchfield opposed it?

18 A. Mr. Birchfield gave a deposition in
19 the bankruptcy proceeding before Judge Kaplan, and
20 in that deposition he testified --

21 THE COURT: Is that the deposition
22 portion, the same one I have?

23 MR. BRODY: Yes.

24 THE COURT: Okay.

25 THE WITNESS: He testified that in

1 addition to the 40 percent contingency fee that he
2 would obtain from any resolution with these
3 claimants, he also was entitled to up to 12 percent
4 for his work in and Beasley Allen's work on the
5 plaintiff's steering committee in the MDL, which
6 would entitle him to the common benefit fee.

7 So it's a 40 percent contingency fee,
8 plus 12 percent of any resolution that was had
9 through the MDL proceedings.

10 That common benefit fee was not
11 available in the plan that LTL was advancing in the
12 LTL bankruptcy.

13 BY MR. BRODY:

14 Q. And what was the end result of the
15 LTL bankruptcy?

16 A. On July 28th, 2023, Judge Kaplan
17 issued a decision dismissing the bankruptcy, and
18 that decision currently is on appeal. The Third
19 Circuit took an expedited appeal directly to the
20 appeal going around the District Court.

21 Q. Did you hear from Mr. Conlan at the
22 time Judge Kaplan announced that decision on
23 July 28th?

24 A. The very day that the bankruptcy was
25 dismissed on July 28th, 2023, Mr. Conlan reached out

1 to me.

2 Q. Okay. And what did he reach out to
3 you to ask, to say?

4 A. Mr. Conlan reached out to me to
5 propose that we have discussions to engage in a
6 structural optimization transaction.

7 Q. What was the next time you heard from
8 Mr. Conlan after that?

9 A. The next time I heard from Mr. Conlan
10 I believe it was on August 21st, 2023.

11 Q. Okay. Did he have a request or an
12 ask at that time?

13 A. Yeah. He had reached out to our
14 treasurer, so he went around me to our treasurer,
15 and he had asked our treasurer for a meeting in
16 order to present that same structural optimization
17 proposal to the treasurer.

18 Q. And did you agree to set that meeting
19 up?

20 A. At that time, having circumvented me
21 in going to the business directly, I felt it
22 incumbent upon me, therefore, to allow me to be at
23 it, so I did.

24 Q. Okay. Do you recall when that
25 meeting took place?

1 A. It took place on September 11, 2023.

2 Q. Who attended?

3 A. To my recollection, it was myself, it
4 was the treasurer of Johnson & Johnson, Andrew White
5 in the litigation department, the practice group
6 leader for product liability, Mr. Conlan, and
7 Mr. Doug Dachille, who I believe is the CIO of
8 Mr. Conlan's firm.

9 Q. And what happened at the meeting?

10 A. Mr. Conlan and his colleague made a
11 presentation with respect to the structural
12 optimization approach that he was proposing at that
13 time. We had discussion regarding that proposal.

14 The question I repeatedly asked was,
15 How was it to be funded, because what was
16 contemplated by that particular structural
17 optimization transaction was that there would be a
18 divisional merger. You would take the liability,
19 put it into a new entity, and then sell that entity
20 off to another party -- in this place, he was
21 contemplating Legacy -- and/or fund that entity as a
22 J&J entity with sufficient funds to cover the talc
23 liability.

24 Now, of course, that begs the
25 question, what would be then, enough about the

1 funds, in order to ensure that (A) if we keep it on
2 J&J books, it would then become de-consolidated,
3 which was the advantage Mr. Conlan was positing, or
4 how much would we have to pay in order to sell it to
5 Legacy and make it a separate entity.

6 And at that point, the basic
7 proposition from his perspective was, Well,
8 whichever way you do it, Legacy would run the entire
9 claim administration process in the resolution of
10 the claims, and, therefore, earn its fee from a
11 management fee that it would then charge to the
12 enterprise that would take on these claims, and get
13 the spread to the extent they were able to resolve
14 it for anything less than funding.

15 Q. What happened after that meetings?

16 A. Well, because the primary issue that
17 was discussed was whether and to what extent there
18 had to be funding for that particular transaction,
19 and we had pushed Mr. Conlan and his colleagues on
20 that. The rejoinder that we got was, Well, you have
21 to ask your auditor.

22 And, therefore, it became incumbent
23 upon me to have a conversation with my auditor on
24 the same topic. I did, and my auditor said that in
25 no circumstances would this be a viable transaction

1 that we would recognize or allow to be consolidated.

2 So we responded to Mr. Conlan and
3 said it was not a viable transaction, we had no
4 interest in proceeding.

5 Q. Okay. Was that the last you heard
6 from Mr. Conlan about the Legacy proposal?

7 A. No, it wasn't.

8 Q. When was the next time you heard from
9 Mr. Conlan after conveying that it wouldn't work?

10 A. I believe it was on September 28th.
11 There was a communication from his CIO, Doug
12 Dachille, to the treasurer again.

13 Q. Okay. And did J&J respond to that?

14 A. J&J rejected that interest -- that
15 inquiry again.

16 Q. All right. Judge Porto and Judge
17 Singh are both aware of the fact, and it's in the
18 record, that Johnson & Johnson third quarter
19 earnings call took place on October 17th of 2023.
20 There was a copy of the transcript of that call, and
21 your comments about the talc litigation are in the
22 record here. So I don't need to go into that.

23 But I want to ask you, after that
24 October 17th earnings call, did you again hear from
25 Mr. Conlan?

1 A. We heard from Mr. Conlan the very
2 next day.

3 Q. All right. And if you turn to --
4 it's Tab 4 in the hearing binder you have, my first
5 question for you is if that's the next-day
6 communication that you're referring to?

7 A. Yes, this is the communication that
8 Mr. Conlan sent to the treasurer of our company,
9 Duane Van Arsdale, on October 18th, copying a number
10 of people, including myself and my colleague, Andrew
11 White.

12 Q. Okay. In this communication,
13 Mr. Conlan says that Legacy has the support of lead
14 counsel for the OC, ovarian cancer claimants,
15 including Andy Birchfield, for an MDL opt-in
16 settlement matrix with Legacy.

17 And then he goes on to say that,
18 "Andy Birchfield, Doug Dachille, and I are prepared
19 to meet with you and your team in person to share
20 and discuss the terms of such matrix as part of the
21 Legacy acquisition."

22 Are you with me?

23 A. I see what you're referring to.

24 Q. What was your reaction to that?

25 A. Quite frankly, I had a number of

1 reactions, but the short of it is we were utterly
2 shocked and appalled that our former counsel was
3 conferring with our adversary, and the lead
4 adversary that was opposing the proposal that we had
5 on the table at that time to get a comprehensive and
6 final resolution, that our former counsel was
7 working with that lead counsel for the claimants to
8 oppose our transaction by proposing an alternative
9 transaction based upon the same matter and the same
10 issues that he had represented us extensively for 21
11 months.

12 So, I mean, my reaction was utter
13 shock and awe. I viewed this to be an egregious
14 violation of Mr. Conlan's ethical obligations to
15 J&J, as well as Mr. Birchfield's ethical
16 obligations, and I reached out to counsel in order
17 to begin the process of assessing what is the
18 appropriate recourse for that interaction.

19 In addition to that, you know,
20 looking at this, at that point in time, our
21 understanding was this was the first time Mr. Conlan
22 had engaged with Mr. Birchfield on this alliance
23 where they are now working together to thwart our
24 proposal, because the way I read it at the time was,
25 "To further enhance our solution and to address the

1 potential auditor concerns."

2 So that this is written in a way to
3 suggest that this is reactive to the response that
4 we just gave to Mr. Conlan. So he is writing to us
5 and he's telling us, Well, you raised a concern and
6 now I'm going to join forces with your adversary to
7 address the issue that you had raised.

8 And notwithstanding whether it
9 addressed the issue, which it didn't, the manner and
10 mode which it did what egregious, in our view, and
11 my view, and a blatant violation of his ethical
12 obligations.

13 Q. And was this the first time, October
14 18th of 2023, that you learned that Mr. Conlan was
15 working with Mr. Birchfield?

16 A. Yes, it does. And Judge, obviously,
17 I highlighted that point because we now know it
18 wasn't true. But I'm telling you contemporaneously
19 at the time, and given the way this was written,
20 that is exactly what it was conveying to us; that
21 suddenly Mr. Conlan had said, Oh, well, let me go
22 out and now contact the other side and start working
23 against you.

24 That's egregious. We now know it's
25 even more egregious because it wasn't the first

1 time.

2 Q. Well, that was going to be my next
3 question for you. Have you since come to learn that
4 Mr. Conlan and Mr. Birchfield were working together
5 throughout the pendency of the mediation that was
6 taking place in the LTL bankruptcy in the summer of
7 2023?

8 MR. POLLOCK: Objection, Your Honor.
9 This goes with the best evidence rule. There is no
10 evidence that this ever occurred. All I have is
11 rank speculation from Mr. Haas as to discussions he
12 wasn't even a part of. How do I possibly
13 cross-examine when they have not produced a single
14 scrap of paper in the record to support any of
15 Mr. Haas' hypothesis. All I have is rage from him.
16 I get it. He's angry.

17 But I'm entitled to documents, and I
18 can't oppose him -- I can't oppose a witness when he
19 has not produced the documents. [U] squarely says
20 you've got a Hobson's choice; produce it or don't.

21 I'm deeply concerned about where this
22 testimony is going, because there's no evidence,
23 whatsoever, to support it.

24 THE COURT: Mr. Brody.

25 MR. BRODY: Well, Your Honor, first

1 of all --

2 THE COURT: Obviously, this is a
3 credibility determination to the extent that there's
4 no document before the Court.

5 MR. BRODY: Let me ask Mr. Haas.

6 THE COURT: I'll overrule the
7 objection, and give you that opportunity, but there
8 is no documentation. I think we cleared that
9 earlier in one of our conferences, right?

10 MR. BRODY: Certainly, Your Honor.

11 BY MR. BRODY:

12 Q. Let me -- let ask you, Mr. Haas, when
13 did you first learn that Mr. Conlan and Beasley
14 Allen were working -- first of all, I don't know if
15 I got an answer to the prior question before the
16 objection, so let me ask that one again just for the
17 record.

18 Have you since come to learn that
19 Mr. Conlan and Mr. Birchfield were working together
20 throughout the pendency of the mediation that was
21 taking place in the LTL bankruptcy in the summer,
22 spring and summer of 2023?

23 A. Yes, I have.

24 Q. When did you first learn that?

25 A. About two weeks ago.

1 Q. How did you come to learn that?

2 A. By the filings by the plaintiff's
3 steering committee in the multidistrict litigation,
4 where they presented a privilege log which had
5 entries in it indicating that as early as April
6 20th, 2023, Mr. Conlan is communicating with Beasley
7 Allen regarding settlement proposals to make to a
8 mediator with respect to a structural optimization
9 proposal.

10 And then, thereafter, the privilege
11 log indicates myriad communications, myriad, one
12 after another after another after another since
13 April 2023 concerning these very same issues and the
14 very same matter that he represented us as legal
15 counsel on and that now, for the first time in
16 October 2023, was coming to light.

17 Q. Did Mr. Conlan ever tell you that he
18 was communicating directly with Mr. Birchfield
19 during the LTL mediation?

20 A. He never once mentioned that he was
21 communicating with Mr. Birchfield or the other
22 members of Beasley Allen, which, per the privilege
23 log they produced, demonstrate that he was having
24 myriad communications not just with Mr. Birchfield,
25 but with other members of Beasley Allen, made no

1 mention of that.

2 And, indeed, he communicated with me
3 on May 10, 2023, shortly after he began working with
4 Mr. Birchfield, and, in that respect, never once
5 mentioned that he had now entered into this alliance
6 with Mr. Birchfield. Never asked for my consent on
7 behalf of J&J to work with Mr. Birchfield on the
8 same matter, on the same issues. Never asked for a
9 waiver as to whether or not he should be able to
10 work on the same matter and the same issues that he
11 represented Johnson & Johnson on throughout 2021
12 into 2022.

13 Q. Has he ever come to you at any point
14 in time and asked for a waiver?

15 A. Not once.

16 Q. Has Johnson & Johnson ever given him
17 a waiver?

18 A. Not once.

19 Q. You mentioned other members of
20 Beasley Allen whose communications are included on
21 that privilege log. Can you tell me who?

22 A. Ms. Leigh O'Dell -- Leigh O'Dell,
23 Mr. Ted Meadows, and there's other individuals at
24 the firm that, you know, their names and their email
25 addresses are listed, but I don't know their

1 particular...

2 MR. BRODY: Judge Porto, that
3 privilege log actually is now on the docket in the
4 federal MDL, and we would ask that this Court take
5 judicial notice of that privilege log and its
6 contents pursuant to Rule 201(b)(4).

7 THE COURT: I can do that. Judge
8 Singh, any thoughts? I have not seen it.

9 MR. POLLOCK: Excuse me, Judge.

10 THE COURT: Sure.

11 MR. POLLOCK: I'm sorry. Before you
12 deliberate, before Judge Singh and before you,
13 Mr. Brody has repeatedly been asked: Are we
14 complete? Is the record done? And the answer is
15 yes. Now, suddenly, we're going to go outside the
16 record. It's obviously in the Court's discretion.

17 THE COURT: Have you seen that
18 privilege log?

19 MR. POLLOCK: I have not seen the
20 privilege log, but I frankly don't really care
21 because -- well, I care deeply about this case.
22 Fine, they had discussions. I have no doubt that
23 they did. There's been no evidence as to what was
24 discussed. And I'm not sure how they would get into
25 it because it's mediation privileged.

1 But to be honest with you, I think
2 that the -- now chime in and say, Hey, we're going
3 to keep on expanding this, keep on expanding this.
4 At some time, Beasley Allen and Andy Birchfield are
5 entitled to a determination whether the motion for
6 disqualification is going to be granted or not.

7 And you and Judge Singh asked
8 pointedly: Is the record complete? And Mr. Brody
9 said, pointedly, yes. I was surprised by the
10 answer. But he said pointedly said yes. He didn't
11 say, I want more stuff in there.

12 And to me, if we open this, there's
13 another set of documents that could also come in,
14 because Judge Schneider ruled upon those. We could
15 keep on expanding those. But at some point, we've
16 got to reach the hard point where we make a
17 decision, and I'm relying upon representation that
18 was made to the Court that we're done.

19 MR. BRODY: Your Honor, this
20 privilege log was just provided by the plaintiff
21 steering committee in the MDL about two and a half
22 weeks ago. It was a shock to us to learn that there
23 were communications going on back and forth between
24 Mr. Birchfield and Mr. Conlan for a period of --
25 starting in late April of -- starting in late April,

1 and the extent -- of 2023, and the extent of those
2 communications.

3 And it's certainly a fact that is
4 directly relevant to the disqualification motion.
5 It's been filed in court. It is on the docket in
6 the MDL. And, obviously, Your Honor, under
7 201(b)(4), you can take judicial notice of the
8 records of court proceedings throughout the state of
9 New Jersey, federal court or state court.

10 MR. POLLOCK: May I respond briefly,
11 Judge?

12 THE COURT: Let me see if Judge Singh
13 has some thoughts.

14 JUDGE SINGH: Interesting, because
15 the privilege log is on the public docket in the
16 MDL, and as I understand it, Judge Schneider has
17 ruled in regards to those documents are to be
18 maintained as privileged. However, the fact of the
19 communications within the log, it's hard to close
20 that once it's already on the docket.

21 I personally would think that it is
22 part of the record. It's something that the Court
23 could consider, at least in the context of my
24 review, but I defer to Judge Porto.

25 THE COURT: And I agree, but what

1 troubles me is Mr. Pollock has not seen that. And
2 when we talk about the record being open, the record
3 being closed, I'm just worrying about that today. I
4 didn't get any indication that that was a
5 possibility two weeks ago.

6 MR. POLLOCK: Your Honor, actually,
7 this was referenced in Mr. Birchfield's supplemental
8 certification. So this is not shocking news.

9 THE COURT: No, but the fact is it is
10 in the context that I don't know what we're talking
11 about.

12 MR. POLLOCK: I agree completely. So
13 I'm prepared to proceed. I do not want to delay the
14 deliberations. The mere fact that I have not
15 reviewed them does not stop me right now, because,
16 frankly, with the mediation privilege, these
17 documents are going to be inadmissible, anyway.
18 They're non-discoverable in New Jersey law.

19 So the fact that they communicated,
20 I'll stipulate to it. They communicated.

21 THE COURT: I will take judicial
22 notice.

23 MR. BRODY: And, Your Honor, let me
24 just --

25 BY MR. BRODY:

1 Q. Let me just ask you this question,
2 Mr. Haas, as a follow-up. Did it -- I mean, did it
3 surprise you to learn two weeks ago that these
4 communications had been going on back and forth
5 throughout May, June, July and August of last year?

6 A. I think what I said was I was shocked
7 and appalled. And yes, it surprised me. It
8 surprised me that someone who had purported to have
9 the caliber of standing in the bar that Mr. Conlan
10 did would engage in this behavior; that
11 Mr. Birchfield would further foster, facilitate, and
12 engage in that conduct. This is the most egregious
13 breach of ethical obligations that I have ever heard
14 of, ever seen.

15 So, yeah, it surprised me, it shocked
16 me, it disappointed me, quite frankly, in many
17 respects with respect to Mr. Conlan in terms of his
18 standing as a lawyer, and as, quite frankly, a
19 trusted advisor of mine for a good part of the time
20 we worked together.

21 Q. Are you aware that the plaintiffs
22 steering committee in the MDL has taken the position
23 that its communications with Mr. Conlan are
24 confidential and protected by mediation privilege?

25 A. I'm aware of them taking that

1 position.

2 Q. That their communications should
3 remain secret from J&J?

4 A. Yes, they have taken that position.

5 Q. Would you have taken steps, if you
6 had known at the time, to prevent Mr. Conlan from
7 working with Mr. Birchfield, Ms. O'Dell and others
8 at Beasley Allen during the course of the LTL
9 mediation?

10 A. I think we would be exactly where we
11 are today, but we would have been there a lot
12 earlier, because I would have taken immediate action
13 had I known this was occurring. And quite frankly,
14 I think that this would be an issue that would have
15 been adjudicated in the context of the bankruptcy
16 court, because to have someone side switch in a
17 matter dealing with the same issues, the very same
18 issues that we have extensively adjudicated,
19 deliberated, considered, communicated is egregious.

20 Q. Turning back to Hearing Exhibit 4,
21 that was the October 18th email, how did J&J, other
22 than you indicated that you started working with
23 counsel at what you could do about the fact that
24 Mr. Birchfield -- that you learned at that time, for
25 the first time, that Mr. Birchfield was working with

1 Mr. Conlan, as to the substance of the proposal,
2 what did Johnson & Johnson do? How did Johnson &
3 Johnson respond?

4 A. Well, in terms of whether or not we
5 were going to sit down with Mr. Birchfield and
6 Conlan and talk about a proposal, that clearly was
7 inappropriate and was rejected.

8 Q. All right. Fast forward to two weeks
9 later, and if you would turn to -- it's tab 15 in
10 the binder. And I'll ask you if you recognize this
11 document.

12 A. This is a document that is an article
13 that Mr. Conlan secured publication for on
14 November 2nd, 2023, and that got significant pick-up
15 in the press.

16 And in this article, Mr. Conlan
17 begins by stating that he is a former Sidley Austin
18 restructuring chair and that he's proposing an
19 alternative to the Texas Two-Step that provides
20 finality to the company and relief to injured
21 plaintiffs.

22 And from the outset, what struck me
23 when I read that very first line, that he did not
24 mention Faegre Drinker, which is the company he was
25 working at, the law firm he was working at when he

1 was representing Johnson & Johnson. And that
2 omission immediately struck me as telling.

3 And as you read through the rest of
4 the article, I think it becomes evident why.
5 Because in this article, he takes positions directly
6 at --

7 MR. POLLOCK: This is narrative
8 testimony. I recognize that is direct examination.
9 But to me, if I wanted a lecture, I could listen to
10 it. I think there's -- otherwise, it's just
11 literally plug and play here. I think there should
12 be questioning, with all due respect, but it's your
13 courtroom.

14 THE COURT: Mr. Brody?

15 BY MR. BRODY:

16 Q. Mr. Haas, were you --

17 THE COURT: I don't -- you know,
18 there are some aspects where a narrative is
19 certainly appropriate, but if we could have direct
20 testimony guided by questions.

21 MR. BRODY: Your Honor, I'll just ask
22 two questions, and I think we can address this.

23 THE COURT: Sure. And I'm not
24 suggesting anything is improper. We have an
25 objection, and if we could refocus, and then have

1 the questions directly.

2 MR. BRODY: Of course. Absolutely.

3 BY MR. BRODY:

4 Q. Were you upset when you saw this?

5 A. I was upset.

6 Q. Why were you upset?

7 A. Because if you look at the second
8 paragraph, it pertains to not only other companies,
9 but to LTL.

10 So Mr. Conlan is purporting to write
11 as a Sidley partner, disregarding the time frame
12 that he represented LTL, and he's writing an opinion
13 piece about LTL that then addresses the matters and
14 the issues that he worked on for us.

15 And, you know, that second -- that
16 paragraph at the top there, where he says these are
17 a list of failed attempts to engage in this
18 restructuring, and he lists Best Wall, DBMP, Aldrich
19 Pump/Murray Boiler. We know from the outset those
20 aren't failed attempts. Those other entities are
21 going forward with this very restructuring that we
22 had in LTL.

23 The only difference between the two
24 is in the Fourth Circuit, where they are moving
25 forward, the ability to move forward with that

1 transaction was being appealed up to the Fourth
2 Circuit, but the bankruptcy courts have endorsed it,
3 while, in the Third Circuit, given the new standard
4 the Third Circuit imposed, LTL is now appealing the
5 decision to dismiss. That is a circuit split, which
6 ultimately will be resolved by the higher courts.

7 But it is important to note there
8 that this is an inaccurate statement from the outset
9 framing the issue. But what is more important, as
10 it goes on in the article, that he actually takes a
11 position with respect to what the company's,
12 including LTL, positions were, what the companies
13 believed.

14 He's representing in the article what
15 we believed, that based upon his communications with
16 us, while he was our counsel, and this was a part of
17 his alliance with Mr. Birchfield, who came out the
18 same day with a press release supporting it.

19 So this is part and parcel of the
20 facilitation of attempt to come up with a competing
21 proposal to thwart the proposal that we were having
22 discussions on at this very time.

23 And Judges, just for a little
24 context, so after the April -- July --

25 MR. POLLOCK: Your Honor, again, if

1 we could have some questioning, it would be helpful
2 for a break, as opposed to a narrative.

3 THE COURT: I believe that's
4 appropriate.

5 So why don't you guide the
6 questioning again, Mr. Brody.

7 MR. BRODY: Sure.

8 BY MR. BRODY:

9 Q. Mr. Haas, you explained why this was
10 upsetting to you and why it was a concern to you.
11 If you would, please, explain, you know, did you see
12 this in the context of the overall effort by
13 Mr. Conlan and Mr. Birchfield to advance their
14 proposal as something other than the bankruptcy
15 proposal that you had indicated publicly on October
16 17th of last year that the company preferred?

17 A. Yes. So, earlier, Mr. Brody made
18 reference to the October 17th statements that I
19 made.

20 THE COURT: Call.

21 THE WITNESS: Call.

22 On that call, I made a statement
23 about what our strategy was following the July 28th,
24 2023, dismissal by Judge Kaplan.

25 What I explained on the call was we

1 had a multistep strategy to move forward in order to
2 obtain a clean and final resolution of the talc
3 claims. The first one we already discussed, which
4 is appealing this circuit split now up to the higher
5 court.

6 The second proposal which I made
7 publicly, the second pathway that I explained
8 publicly, was to pursue a resolution, a consensual
9 resolution through bankruptcy again.

10 Now, why was that? In the July 28,
11 2023 decision by Judge Kaplan, he found that the
12 parties, LTL and the majority of claimants that were
13 supporting the plan, had made, his terms, remarkable
14 progress towards getting an equitable and final
15 resolution. And then, he thereafter strongly
16 recommended and urged the parties to continue to
17 pursue that resolution through another bankruptcy.

18 So I made clear on the earnings call
19 that that is exactly what we intended to do, with
20 the same amount that we were proposing through the
21 prior bankruptcy.

22 THE COURT: The \$9.9 billion.

23 THE WITNESS: It was 8.9.

24 THE COURT: 8.9.

25 THE WITNESS: Yes. And this proposal

1 that was being proposed by Mr. Conlan with
2 Mr. Birchfield contemplated a \$19 billion resolution
3 and was attempting to garner support through these
4 articles to oppose, to thwart our ability to get a
5 resolution.

6 So that is why I viewed this as part
7 of the alliance between the two in order to thwart
8 our efforts for a comprehensive resolution, because
9 Mr. Birchfield doesn't want a resolution in
10 bankruptcy because of the conflict we previously
11 discussed.

12 BY MR. BRODY:

13 Q. And just for the record, you referred
14 to a contemporaneous publication or a near
15 contemporaneous publication the same day by
16 Mr. Birchfield. Do you recognize that as what is
17 behind tab 18 in the binder?

18 A. Yes, I do.

19 Q. All right.

20 A. And this was picked up by a number of
21 different media outlets.

22 Q. And then moving ahead, you mentioned
23 the \$19 billion that was attached to the
24 Birchfield/Conlan proposal. When did you first
25 learn that there was a \$19 billion price tag

1 attached to their proposal?

2 A. On November 19th, notwithstanding our
3 repeated rejections of the proposal --

4 Q. November 9th, I believe.

5 A. Excuse me. Quite correct.

6 On November 9th, notwithstanding that
7 we had repeatedly rejected Mr. Conlan's proposals
8 over the course of the years, but also through the
9 -- since the dismissal of the bankruptcy, on the
10 9th, he circumvented not only me, but then he
11 circumvented the treasurer and he sent a
12 correspondence directly to our CEO.

13 And in that correspondence, he
14 purported to say the board, quote, must consider
15 this proposal, and in that he described the proposal
16 that he had developed with Mr. Birchfield that was
17 demanding a \$19 billion payment to Legacy in order
18 to resolve the talc claims by taking them off of the
19 company's books through this structural optimization
20 move, which we had already been advised would not
21 work.

22 Q. And if you would, in the binder, if
23 you could, just refer to the document at tab 7, and
24 let me know if that is the communication that you're
25 referring to.

1 A. Yes. This is the document I was
2 referring to, and --

3 Q. Now, let me -- let me preface it with
4 a question, first of all.

5 A. Sure.

6 Q. The document indicates in the second
7 paragraph -- this is the letter from Mr. Conlan, is
8 it?

9 A. Yes, it is.

10 Q. And it attaches at the last page a
11 proposed settlement matrix. Do you see that?

12 A. Yes.

13 Q. Is this the first time the settlement
14 matrix associated with the Conlan/Birchfield
15 proposal had been shared with you?

16 A. It was.

17 Q. If you turn back to the first page of
18 the document, there's an indication in the second
19 paragraph of Mr. Conlan's letter: "Importantly,
20 Legacy's proposal has been reviewed and supported by
21 leadership counsel on both the federal MDL and in
22 state court cases across the country."

23 Do you see that?

24 A. Yes.

25 Q. So, what was your reaction to the

1 fact that you were being told that this proposal had
2 been shared by Mr. Conlan and Mr. Birchfield with
3 plaintiffs' counsel, your opposing counsel, before
4 your former lawyer brought it to you?

5 MR. POLLOCK: Objection, Your Honor.

6 The document doesn't state that on
7 its face. It doesn't say Mr. Conlan shared this
8 with anyone -- Mr. Birchfield shared this with
9 anyone.

10 THE COURT: Mr. Brody?

11 I see the sentence.

12 MR. BRODY: I'll just ask.

13 BY MR. BRODY:

14 Q. What was your reaction to this?

15 A. Again, I found this completely
16 remarkable because this is -- this is a further
17 disclosure of just how far the communications
18 between Mr. Conlan and Mr. Birchfield had gone and
19 what the considerations were.

20 When you go to the final page that
21 Mr. Brody just referred to, the settlement menu
22 matrix, which involved a per claim analysis, and
23 across the top and along the columns on the side,
24 you will see the various criteria that go into the
25 development of the per claims amounts.

1 And there's a huge amount of
2 deliberation and consideration that goes into that.
3 And the idea that Mr. Conlan, our former counsel,
4 who had engaged in discussions of the pluses and
5 minuses, of the strength and weaknesses, of the
6 disadvantages and advantages of different offers to
7 us, and where we stood to be in a better position,
8 where we stood to be in a more challenging position,
9 was egregious.

10 I mean, he is effectively taking our
11 inside perspective and providing it to the alliance
12 with Mr. Birchfield so that they can thwart our
13 offer. It's really beyond the pale. And the idea
14 that our counsel is now our primary adversary and
15 aligned with the lead adversary in the talc
16 litigations, which they purport to be in each of
17 these forums, it's just amazing. And I really, I'm
18 almost at a loss of words about how upsetting this
19 was when we saw this and how upsetting it was for
20 the organization.

21 MR. POLLOCK: Your Honor, I move to
22 strike all the testimony regarding Andrew Birchfield
23 as there's zero support anywhere from Mr. Haas that
24 Mr. Birchfield had anything to do with this
25 communication.

1 He keeps on railing against my
2 client, as he is entitled to. He can dislike him as
3 much as he wants. I'm entitled to proof. There is
4 no evidence that Mr. Birchfield's ever had any
5 participation in this document.

6 MR. BRODY: Your Honor, Mr. Haas has
7 just testified that two weeks, three weeks prior to
8 when this document was sent, he got a communication
9 from Mr. Conlan saying that he had developed a
10 settlement matrix, and that Mr. Conlan and
11 Mr. Birchfield were prepared to come in together and
12 discuss it. And this follow-up communication says
13 specifically that the proposal has been reviewed by
14 leadership counsel in the federal MDL and the state
15 court.

16 It's not, you know -- that's -- I
17 don't think it's a valid objection. It's a subject
18 for cross-examination, and I'm sure that Mr. Pollock
19 can ask Mr. Haas questions about it.

20 THE COURT: I'm going to overrule the
21 objection and it will be subject to
22 cross-examination.

23 MR. BRODY: Thank you.

24 THE COURT: We've been going about an
25 hour and a half now. Is anybody looking for a

1 break?

2 MR. BRODY: I just -- if possible,
3 Your Honor, I have about four or five more
4 questions.

5 THE COURT: That's fine. But I think
6 it was an appropriate time to ask that question.

7 MR. BRODY: Certainly. And we can
8 break now, if you --

9 THE COURT: No, I'm not going to
10 break the momentum. But you may continue.

11 MR. BRODY: Sure.

12 BY MR. BRODY:

13 Q. Mr. Haas, I want to draw your
14 attention to the sentence that starts at the bottom
15 of the first page of this November 9th letter, with
16 the word "indeed." He wrote: "Indeed, even if such
17 plan were confirmed, it simply cannot free J&J of
18 its direct liability."

19 Do you see that?

20 A. I do.

21 Q. And was that something that caused
22 you concern?

23 A. Judges, he's speaking to the plan
24 that we're proposing. Here's our former counsel,
25 who provided advice on that very issue, inconsistent

1 with what he's saying here, but he's basically
2 taking a position with respect to a plan that we are
3 currently proposing that has been deliberated
4 extensively over the course of a time frame in which
5 he was our counsel, and now he's going out and
6 opining that it will never work. This is our
7 advocate advocating against us.

8 Q. Have you learned, Mr. Haas, that not
9 only was this something that was being advanced
10 through the Bloomberg article and the press release
11 that we saw from November 2nd, in the media, but
12 also that it was being advanced with the investment
13 community?

14 A. So immediately after receiving this,
15 I sent an email to Mr. Conlan's firm, saying: Stop
16 it. You're breaching your ethical obligations.
17 Ignored.

18 On the 15th of November, I believe
19 that was the right date, we received notice that
20 Mr. Birchfield and Mr. Conlan were then attending an
21 investor conference, the Gordon Haskett Conference,
22 in which they were going to present this very
23 portfolio.

24 MR. POLLOCK: Objection; it's
25 speculation as to what they were going to present.

1 THE COURT: Sustained.

2 BY MR. BRODY:

3 Q. Did you -- I'm sorry. Did you, at
4 that time, come to have an understanding of what
5 they were going to present?

6 A. We were advised that Mr. Birchfield
7 and Mr. Conlan were making a proposal at an investor
8 conference, the Gordon Haskett Conference, regarding
9 the resolution of the talc claim.

10 MR. POLLOCK: Same objection, Your
11 Honor. "We were advised." Rank hearsay.

12 THE COURT: I agree. Sustained.

13 MR. BRODY: That's fine, Your Honor.

14 BY MR. BRODY:

15 Q. Mr. Haas, I want to -- I want to,
16 before we conclude, I want to bring you back to last
17 summer. What was going on in the LTL bankruptcy
18 last summer when Mr. Conlan was engaged in these
19 what they say are privileged communications with
20 Mr. Birchfield and Ms. O'Dell and others at Beasley
21 Allen?

22 A. There was extensive motion practice
23 on the motion to dismiss that Mr. Beasley --
24 Mr. Birchfield was leading. There was extensive
25 discovery with respect to that motion practice;

1 ultimately culminated in a week-long hearing on a
2 motion to dismiss, followed by extensive posttrial
3 findings of facts and conclusions of law.

4 Suffice it to say, there were myriad
5 opportunities for either Mr. Conlan or
6 Mr. Birchfield to disclose the alliance that they
7 had formed at that time, and not once, not once in
8 any of those motions, submissions, discoveries,
9 including the deposition of Mr. Birchfield for -- in
10 the week-long intensive hearing followed by full
11 briefing on the motion to dismiss did they ever
12 disclose that Mr. Conlan was working with
13 Mr. Birchfield. And Mr. Conlan never approached me
14 for a waiver, or anyone at my firm, and never once
15 asked for consent to engage in that relationship.
16 Not once. There were untold opportunities to do so,
17 and he never did.

18 Q. And is it concerning to you now to
19 know that while Johnson & Johnson was engaged in
20 mediation with the TCC in the LTL bankruptcy that
21 your former lawyer, Mr. Conlan, was communicating
22 directly, collaborating directly with Mr. Birchfield
23 and his firm on the other side of that mediation?

24 MR. POLLOCK: Objection to the word
25 "collaborating," again, this conspiracy, cover the

1 darkness. They were either working -- they were
2 working together, yes, but there's no proof of
3 anything else beyond the fact that they were
4 communicating.

5 THE WITNESS: I can answer --

6 THE COURT: It may be a choice of
7 words.

8 MR. BRODY: It may be a choice of
9 words, and, Your Honor, we will definitely get to
10 collaborating today.

11 BY MR. BRODY:

12 Q. But for now, I'll just ask you:
13 Knowing now what you know from the privilege claims
14 that have been asserted by the plaintiffs steering
15 committee and what you know about the work
16 communications that were going on on the other -- in
17 secret on the other side of that mediation, is that
18 a concern to you?

19 A. I go back to what I said earlier.
20 This fundamentally undermines the entire judicial
21 process. It provides an unfair advantage to an
22 adversary in an adversarial system. The
23 conversations that being had by the disclosures in
24 the privilege log and based upon the declaration
25 submitted by Mr. Birchfield indicated they involved

1 the same matters and the same issues for which
2 Mr. Conlan was representing us.

3 Having those communications by their
4 very nature is a violation of his duties to us,
5 because those conversations necessarily are imbued
6 with the confidential work product privileged
7 information we conveyed to Mr. Conlan and had
8 extensive discussion and deliberation on.

9 And so I go back to the core
10 principle: It contravenes the judicial process;
11 it's contrary to the interest of justice; and it
12 fundamentally undermines the adversarial system.

13 Q. Was Mr. Conlan privy to privileged
14 and confidential information about J&J's negotiating
15 strategy in its attempt to resolve the litigation
16 pending in New Jersey and in the MDL that you
17 believe would be directly relevant to the LTL
18 bankruptcy mediation that went on last summer?

19 MR. POLLOCK: Your Honor, I object.
20 There's been multiple efforts at the settlement.
21 There was an effort within Imerys, there was an
22 effort within LTL, then there was LTL 2, there's
23 been mediation before people. I have no clue what
24 time period we're asking about.

25 THE COURT: Well, it was last summer.

1 Any particular time period?

2 MR. POLLOCK: Was that the only time
3 period?

4 THE COURT: Yeah, that was the time
5 period.

6 MR. BRODY: My question --

7 THE COURT: Right?

8 MR. BRODY: I can rephrase it. I can
9 rephrase it.

10 THE COURT: All right.

11 BY MR. BRODY:

12 Q. My question is: Based on your
13 knowledge of the privileged and confidential
14 communications that Mr. Conlan was exposed to,
15 whether it be talking about potential resolution
16 through the tort system, resolution through the
17 Imerys bankruptcy, resolution through MDL, are those
18 confidential and privileged discussions that he was
19 involved in relevant to the mediation that took
20 place last summer?

21 MR. POLLOCK: Your Honor, again, same
22 objection. Multiple discussions regarding the MDL
23 -- I can't remember what the litany was, it's that
24 long.

25 I am entitled, when my client is

1 accused of having violated the rules of professional
2 conduct, to some facts. That's what [Trupo] says.
3 I'm entitled to some facts. I would like to know
4 what discussions, what date, what year, where were
5 they, what happened, because right now I have no
6 clue. When I'm attacking a boogie man, I can't do
7 it if I don't know what it looks like.

8 THE WITNESS: I can -- I can answer
9 the --

10 THE COURT: Well, I understood the
11 question. Mr. Haas, you understand the question.

12 THE WITNESS: Yes.

13 THE COURT: So I'm overruling the
14 objection. But, you know, the time frame is last
15 summer. So is it June, July, August? July? June?
16 August? What, in terms of summer --

17 BY MR. BRODY:

18 Q. So my question is: Is the privileged
19 and confidential information that Mr. Conlan learned
20 during the 20 months that he represented J&J
21 relevant to the mediation discussions that were
22 going on in May, June, and July of last year, in the
23 LTL bankruptcy?

24 MR. POLLOCK: This is precisely my
25 objection, Your Honor. He is morphing time frames.

1 He is not talking about after Mr. Conlan formed
2 Legacy. Mr. Brody is asking about all of the stuff
3 that you learned beforehand, whatever that time
4 period was, is it relevant to what's occurring now.

5 And if that is true, if that's really
6 his question, which I think it is, I would like to
7 know which one. Imerys? LTL? Which discussions?
8 Where did they occur? What was discussed? Because
9 I have no idea how to value relevance. [U] says
10 clearly, you've got a Hobson's choice. Put the
11 documents in, or tell us what the discussions are,
12 or you don't have the argument.

13 But they want to have the best of
14 both worlds. They want to say I'm not going to give
15 you the facts, but it's generally true we talked
16 about some stuff, and it's relevant to now. I want
17 to know, if we're going to go here, and this is our
18 big windup, I want to know exactly what was
19 discussed and when.

20 THE COURT: Well, one of the points
21 raised in one of the certifications, and I think it
22 was from either -- I think it was probably
23 Mr. Birchfield saying whatever Mr. Conlan learned,
24 it's now dated.

25 MR. POLLOCK: Correct.

1 THE COURT: Right?

2 MR. POLLOCK: Yes, sir. That's
3 exactly my point.

4 THE COURT: And that -- well, and
5 now, I think -- and I'm not making anybody's
6 argument here, but Mr. Brody is now saying, is it
7 now relevant in contrary to the dated statement.

8 So I'm going to overrule the
9 objection. You can ask that question.

10 Do you understand the question?

11 THE WITNESS: I do, Judge, and I
12 think I can answer it, because I think it goes
13 exactly to that point. Because what we were
14 discussing through that time frame when Mr. Conlan
15 was representing Johnson & Johnson is relevant to
16 each of the mediations and to what currently is
17 going on now, because it's the same issues, and the
18 same deliberations that were pertinent during the
19 time frame when he was counsel are pertinent now.
20 Because what form, what structure, what are the
21 advantages and disadvantages of both, how do you
22 value the claims both from the current claims and
23 the future. They're the same claims.

24 And keep in mind the one thing that's
25 significant here in terms of timing is that time

1 flows during the time from when the bankruptcies
2 were in place from October 2021 through July 28th,
3 2023, because of the automatic stay.

4 So all of those factors that were
5 discussed are highly pertinent to the resolutions
6 throughout that period and the discussions
7 throughout that period, and as they are today.

8 And so, it is forum, when, who,
9 aggregate claim amount, per claim amount, factors to
10 consider, how to value future claims, you know, the
11 timing of future claims, what factors go into
12 whether or not future claims are going to escalate
13 or deescalate.

14 All of those things were the subject
15 of many conversations with Mr. Conlan and his views
16 that he expressed and that he commented on and that
17 we conveyed to him are just as pertinent in those
18 mediations that happened each time because the same
19 issues came up as they are to this day. So they're
20 squarely relevant to the issues.

21 And it's an unfair advantage for him
22 to have any conversations, communications on those
23 issues with Mr. Birchfield to develop a
24 countervailing proposal because necessarily imbued
25 in the conversations, no matter how they are

1 communicated, are our views. And that is really --
2 that is why this is fundamentally undermining the
3 integrity of the process.

4 MR. BRODY: Thank you, Mr. Haas.
5 That's all I have, Your Honor.

6 THE COURT: We'll take a break.
7 Judge Singh and I may have some questions. I
8 generally like to ask questions before we go to
9 cross-examination so that counsel can direct it or
10 address it, and then Mr. Pollock will have an
11 opportunity on cross.

12 MR. POLLOCK: Thank you, Your Honors.

13 (A recess was taken.)

14 THE COURT: We have a few questions.
15 Where is Mr. Haas? Mr. Haas, you're still under
16 oath.

17 THE WITNESS: Yes, sir.

18 THE COURT: Judge Singh.

19 JUDGE SINGH: Oh, yes. Thank you.

20 We wanted to direct your attention to
21 the exhibit that was talked about earlier, Exhibit
22 7, I believe it is, the November 9th, 2023 letter.

23 THE WITNESS: Yes, Your Honor.

24 JUDGE SINGH: And we're curious about
25 the attached matrix. Has the categories within this

1 proposed matrix come up in prior mediation,
2 settlement discussions, et cetera?

3 THE WITNESS: Yes, Your Honor, they
4 have. The age, the disease state, the severity of
5 the disease state, the length at which the disease
6 has had -- each one of these has, if you go across
7 the top and along the column on the left, each one
8 of these are different criteria that have come up
9 repeatedly in every single one of the settlement
10 discussions we've had going back to, I would say,
11 the 2020 discussions. And there's a reference in
12 the papers about a Beasley Allen proposal in the
13 fall of 2020. I think it was a 3.5-- 3.25 billion
14 dollar proposal for an ovarian settlement. It was a
15 grid that had these criteria and others.

16 Again, in the spring of 2021, there
17 was another proposal, same types of criteria. And
18 what oftentimes is this will be the base criteria
19 and then you will have additional considerations
20 when it's drafted up that will speak to other
21 factors that will increase or decrease the amount,
22 such as familial history of the cancer, genetic
23 issues that are -- the individual claimant may or
24 may not have, time limitations that may or may not
25 impact, depending on the statute of limitations.

1 But those other ones are always layered on when you
2 get to the final drafting of the documents.

3 But to answer your question, yes.

4 JUDGE SINGH: Okay. Thank you.

5 Judge Porto.

6 THE COURT: When did this matrix,
7 when was this developed?

8 THE WITNESS: Well, this particular
9 matrix, the numbers here are different than the
10 numbers. The matrix concept is not new to this
11 particular tort, but the considerations and what
12 numbers are to go in were discussed from the outset
13 of Mr. Conlan's representation.

14 THE COURT: Specifically, which
15 numbers?

16 THE WITNESS: Which numbers?

17 THE COURT: All the numbers? A
18 particular category of numbers?

19 THE WITNESS: Both the aggregate and
20 the individuals. Okay. And that, Your Honor, that
21 is a very good question, because oftentimes the
22 aggregate number drives the individuals. And there
23 are components of that that have to be taken into
24 account, whether or not you're just contemplating
25 futures, just contemplating current, or a

1 combination of both.

2 THE COURT: So when you say within
3 the time frame that Mr. Conlan was with Faegre
4 Drinker, that -- those 18 months, or whatever it
5 was, 21 months.

6 THE WITNESS: Yes.

7 THE COURT: That was there.

8 THE WITNESS: Yes, Your Honor.

9 THE COURT: And so we can trace that
10 origination to that particular time.

11 THE WITNESS: You can trace the
12 schedules and numbers in schedules. And they're
13 going to vary because of the advice of counsel that
14 was given. Clearly, these aren't our numbers,
15 because this is the 19 billion dollar number.
16 Right?

17 THE COURT: Right.

18 Judge Singh?

19 JUDGE SINGH: Nothing further.

20 THE COURT: Okay. Mr. Brody,
21 anything to follow up on the Courts' questions.

22 MR. BRODY: Nothing on follow-up,
23 Your Honor.

24 THE COURT: Thank you.

25 Mr. Pollock?

1 MR. POLLOCK: Your Honor, if it's
2 okay with you, I may sit for part of this, only
3 because I've got -- it's easier for me to read my
4 documents, and there's no lectern.

5 THE COURT: That's quite all right.

6 MR. POLLOCK: That's fair enough?

7 THE COURT: Yup. You can move the
8 podium, too, if you want.

9 MR. POLLOCK: I don't want to screw
10 up your electronics and then have the court marshall
11 throw me out and I get in trouble.

12 THE COURT: No, I think it's not --
13 it's not operative, but it's your option.

14 MR. POLLOCK: I can do it from here,
15 Judge.

16 - - -

17 CROSS EXAMINATION

18 - - -

19 BY MR. POLLOCK:

20 Q. Mr. Haas, as you probably know, my
21 name is Jeff Pollock. I met you beforehand.

22 Mr. Conlan you described as a central
23 figure, but isn't it true he never entered an
24 appearance in either LTL or in Imerys?

25 A. I don't they think there's an

1 inconsistency with those two statements.

2 Q. Mr. Haas --

3 A. Well, you prefaced it. So if your
4 question is whether he made an appearance --

5 Q. Yes, sir.

6 A. -- I am not aware if he has made an
7 appearance, quite frankly. I know that he commented
8 on submissions in the proceedings. So I'm not sure,
9 frankly, to answer your question.

10 Q. I can tell you from information and
11 belief, he never entered an appearance in either
12 case. Do you have any reason to believe that's not
13 true?

14 A. I stand on my answer. Not to
15 quibble, I just do not know whether he made an
16 appearance. I can tell you based upon his work, he
17 commented on submissions to the Court in both of
18 those matters. So, you know, oftentimes, I would
19 expect someone doing so to make an appearance. I
20 just -- sir, I just cannot say one way or the other
21 whether he had.

22 Q. Fair enough. You also mentioned you
23 had weekly standing calls with Mr. Conlan; do you
24 remember that testimony?

25 A. We had weekly standing group calls,

1 many of which -- most of which Mr. Conlan
2 participated in.

3 Q. But you did not provide a single
4 document to support that statement, did you?

5 A. I don't think that's correct. We do
6 have submitted, I believe, you'll have to ask my
7 counsel, but the time records that Mr. Conlan,
8 himself.

9 Q. Actually, I want to ask you about
10 that. You have how many lawyers representing you,
11 approximately?

12 A. Are you talking --

13 MR. BRODY: Objection.

14 A. -- J&J or --

15 THE COURT: Hold on. Hold on,
16 Mr. Haas, there's an objection.

17 MR. BRODY: I just object. It's
18 unclear whether he's asking about the entire talc
19 litigation or with respect to this disqualification
20 issue.

21 THE WITNESS: And internally --

22 THE COURT: With regard to? What's
23 it in regard to?

24 MR. POLLOCK: I rephrase the
25 question.

1 BY MR. POLLOCK:

2 Q. In the last four years, you have
3 retained as J&J multiple lawyers to represent J&J in
4 the LTL and Imerys matter, correct?

5 A. Yes, sir.

6 Q. And your legal spend is well over
7 \$500 million in legal defense costs alone, correct?

8 A. Yes, sir.

9 Q. In fact, it's over a billion dollars,
10 isn't it?

11 A. Yes, sir. And that's one of the
12 reasons why the entity that was responsible,
13 Johnson & Johnson Consumer, Inc., was in the red.

14 Q. So you have an army of paralegals,
15 associates, and legal counsel at your fingertips,
16 correct?

17 A. I don't know if I would characterize
18 it that way, but we have a lot of legal
19 representation on the talc claims at large.

20 Q. And in your initial certification,
21 you talk about the review of -- it's your first
22 exhibit. You talk about -- it's Exhibit 1. You
23 talk about you became familiar with Mr. Conlan's
24 work by review of the timesheets and documents and
25 things. Do you recall giving that certification?

1 A. My statement was actually broader
2 than that. My statement was I am familiar with
3 Mr. Conlan's work from his participation in weekly
4 calls, from his direct interactions with me, both
5 through emails and communications, and I also
6 reviewed the records that showed that he had billed
7 almost 1600 hours to our firm.

8 Q. When you sign a certification under
9 oath attempting to disqualify counsel, do you
10 understand that that certification has to be
11 truthful, accurate, and complete?

12 A. When I sign any certification, sir, I
13 answer that truthfully and accurately to the best of
14 my ability.

15 Q. And it's complete, right? You would
16 not leave out information by way of omission, right?

17 A. I think that's kind of a vague
18 statement. Whenever I certify a statement, I
19 attempt to certify the statements therein as
20 accurately as possible.

21 Q. Excellent.

22 Paragraph 3, page 1: "I became
23 familiar with work performed for J&J by Attorney
24 James Conlan of the law firm of Faegre Drinker
25 between July '20 and early 2022."

1 Do you see that sentence?

2 A. First of all, I -- what date was
3 that?

4 Q. It's Exhibit 1. It's Plenary Hearing
5 001 at the bottom. Paragraph 3. I'm just asking
6 about that one sentence: "I became familiar with
7 work performed for J&J by the James Conlan of the
8 law firm of Faegre Drinker between July 2020 and
9 early 2022."

10 Do you see that?

11 A. Yes. That's exactly what I said,
12 sir. I said -- there's two different sentences.
13 One said "I became familiar," the other -- and for
14 the reasons I stated --

15 MR. POLLOCK: With respect, Your
16 Honor, this is your court, I -- I would really like
17 to conduct my questions as opposed to getting a
18 narrative each time.

19 THE COURT: Sure. And so, Mr. Haas,
20 if you can direct your answer to the specifics asked
21 in the questions asked.

22 THE WITNESS: I believe his first
23 question was, did I become familiar by reading the
24 time entries. There's two different sentences.

25 THE COURT: Well, he's asking about

1 the sentence now.

2 BY MR. POLLOCK:

3 Q. You wrote the sentence, right? You
4 reviewed it and you signed it, right?

5 A. I did. And so, if the question is,
6 Is the first sentence accurate, the first sentence
7 is accurate.

8 Q. Excellent.

9 And you were comfortable signing that
10 certification and submitting it to the Court,
11 correct?

12 A. That is correct.

13 Q. Now, what's -- if you look at the
14 next paragraph 5, you say: "Billing submitted by
15 Mr. Conlan reflects that, during this period,
16 Mr. Conlan billed almost 1,600 hours on the talc
17 matter, including 1,154 hours in 2021 alone. The
18 records reflect that Mr. Conlan billed J&J 2.24
19 million for this work."

20 Do you see that?

21 A. Yes, sir.

22 Q. Have I read it accurately?

23 A. To the best of my recollection.

24 Q. But you have not produced a single
25 one of those documents here today; isn't that

1 correct?

2 A. Are you asking whether or not we
3 produced the billing records?

4 Q. Yes. The billing records were not
5 submitted to this Court.

6 A. The billing records, to the best of
7 my understanding, are available for the Court's in
8 camera review, if the Court so chooses to review
9 them.

10 Q. And they were not provided to the
11 Court in camera, were they, sir?

12 A. You'll have to ask my counsel.

13 Q. Excellent.

14 Paragraph 6, "Those same billing
15 records show that during this time period,
16 Mr. Conlan attended dozens of meetings and phone
17 calls with members of the J&J Law Department,
18 including myself, J&J'S former head of litigation,
19 Joseph Braunruether, former products liability lead,
20 John Kim, and current product liability head, Andrew
21 White."

22 Do you see the sentence to which I
23 refer?

24 A. Yes.

25 Q. So, in each case, you refer to

1 billing records, right? You refer to documents you
2 reviewed. "I became familiar with," paragraph 3;
3 "billing records submitted," paragraph 5; "those
4 same billing records," paragraph 6.

5 Each case you're talking about your
6 knowledge from a review of the documents, "I became
7 familiar with," as opposed to your testimony today,
8 where you say "I had weekly calls, direct emails,
9 matrices, billing statements, in-person meetings."

10 Why the significant change in tone
11 from your first certification, which talks about "I
12 learned about Mr. Conlan through this reading of his
13 bills," as opposed to the testimony today, which is
14 "I knew because I talked to him personally about
15 this all the time"?

16 A. There is no change in tone, sir.

17 Q. Okay.

18 A. The testimony today, as here, the
19 testimony is about what I did. So I am attesting to
20 what the documents show here, and today I am
21 attesting to what my experiences were working with
22 Mr. Conlan. There's no inconsistency with the two.
23 They are consistent, and they corroborate each
24 other.

25 So there's no -- so there is no shift

1 in substance or tone or matter. They're absolutely
2 100 percent aligned.

3 Q. Let's look at paragraph 7. "Conlan's
4 time entries and the billing entries show that he
5 communicated regularly." So it's not just the
6 effort you made; it's what he did. If you're
7 talking about what Mr. Conlan did in paragraph 7,
8 and you're saying this based upon time entries.

9 Isn't that true, sir?

10 A. The time entries corroborate what he
11 did.

12 Q. And you don't say, at that point in
13 time, in your certification, you never said, "I
14 personally sat down with Jim Conlan. I personally
15 worked with this guy." What you say is, Time
16 entries indicate these things, correct?

17 A. In this particular paragraph, the
18 series of paragraphs, sir, I am referring to the
19 time records, which corroborate my positions with
20 respect to what Mr. Conlan did, and I don't think
21 anybody contests that.

22 Q. So your later certification is far
23 different. There you've got -- let me just find it
24 for a second here.

25 It's Exhibit 13, sir. Tell me when

1 you're ready.

2 A. Is there a particular paragraph?

3 Q. Yes, sir. Paragraph 3. "I worked
4 directly with Attorney Conlan of Faegre Drinker when
5 Mr. Conlan represented J&J in this matter that is
6 being litigated before this Court and elsewhere. I
7 worked with Mr. Conlan from the time I joined J&J in
8 November 2020 to February 2022, when Mr. Conlan left
9 Faegre." Correct? Have I read it correctly?

10 A. Have you read it correctly? Yes,
11 sir.

12 Q. I'm asking you a question.

13 A. I thought you were asking whether you
14 read it correctly.

15 Q. Yes.

16 A. I said yes.

17 Q. Excellent. I'm sorry. I didn't hear
18 you.

19 The \$19 billion number that you
20 mentioned, your testimony was that Mr. Conlan and
21 Mr. Birchfield conspired, met together, worked
22 together, a particular phrase, was something that
23 they presented was inconsistent with what J&J wants,
24 right? \$19 billion is not what J&J would like to
25 see?

1 A. So we're off the declaration? We're
2 onto the letter?

3 Q. We're off the declaration.

4 A. Okay.

5 Q. So you testified towards the end of
6 Mr. Brody's direct, he asked you about the \$19
7 billion number, and I believe that the sum of your
8 testimony was that you believed that Mr. Conlan and
9 Mr. Birchfield conspired to drive this matter to the
10 \$19 billion number. Is that correct?

11 A. I'm just not understanding your
12 question.

13 Q. Sure. Mr. Conlan -- you testified
14 for Mr. Brody, when Mr. Brody was asking you
15 questions on direct -- do you recall that?

16 A. I recall answering questions about
17 the 19 billion, yes, sir.

18 Q. Right. And isn't it your belief,
19 your testimony, that the \$19 billion number was
20 something that Mr. Birchfield and Mr. Conlan
21 contrived, that they came up with that number?

22 A. Mr. Birchfield and Mr. Conlan,
23 together, presented at -- the proposal for the \$19
24 billion alternative resolution that was at odds with
25 the proposal that we had offered, and, indeed, was

1 an attempt to -- and Mr. Birchfield has made no
2 secret of this -- thwart our offer and derail our
3 attempt to resolve the case for \$8.9 billion
4 pursuant to our prior proposal.

5 Q. So, put simply, J&J proposes 8.9
6 billion; you believe Mr. Conlan and Mr. Birchfield
7 are proposing roughly 19 billion?

8 A. That's what Mr. Birchfield has said
9 in different forms, including the Mass Tort Made
10 Perfect, or Mass Tort Gone Wild, whatever it's
11 referred to, and the correspondence that has been
12 set forth into the record.

13 Q. Okay. I would really like to get a
14 yes or no to this one. It's a pretty simple
15 question.

16 Am I correct J&J wants the 8.9
17 billion; you believe Mr. Conlan and Mr. Birchfield
18 want the 19 billion?

19 A. Yes, sir.

20 MR. BRODY: Objection, Your Honor.
21 It's been asked and answered.

22 THE WITNESS: Yeah, I just --

23 THE COURT: Well, to the extent I
24 think Mr. Pollock wants a more direct answer, I will
25 overrule the objection.

1 THE WITNESS: The answer to that
2 question is yes, sir.

3 BY MR. POLLOCK:

4 Q. Excellent.

5 When you talk about the matrix, and
6 the matrix that we're talking here is the one --
7 Exhibit 7, it's the last page. It's Plenary Hearing
8 67, sir.

9 Is it your testimony that Mr. Conlan
10 got that matrix from J&J?

11 A. Mr. Conlan -- that's not -- again,
12 this goes to exactly the issue we just talked to the
13 Judges. The numbers in this matrix obviously are
14 different than the matrices that Mr. Conlan debated,
15 consulted on, conferred with, and discussed with us.

16 My point was in that testimony, sir,
17 is that the very nature of having those
18 conversations with Mr. Birchfield about the factors
19 that go into this matrices, and whether and to what
20 extent certain numbers should be offered and certain
21 others should not be was imbued by the privileged
22 communications that we had with Mr. Conlan.

23 Every time Mr. Conlan and
24 Mr. Birchfield sit down and talk about anything to
25 do with this proposal, those conversations

1 necessarily implicate the attorney-client
2 privileged, work-product-protected, and confidential
3 communications that he had with us on the very same
4 topic. So that's my position.

5 Q. Understood. If you could answer my
6 question, it would be great.

7 A. And I did.

8 Q. If you would, sir. I'm going to ask
9 the questions. I really need you to answer my
10 questions. Otherwise, we will be here a long day.

11 This is paragraph -- page -- Exhibit
12 7, Plenary Hearing 67. There is a chart. It's a
13 matrix. Do you see it?

14 A. You're talking to -- about the
15 exhibit --

16 Q. Yes.

17 A. -- or the Legacy chart?

18 Q. Yes. That chart was not prepared by
19 J&J, correct? That chart with these numbers was not
20 prepared by J&J.

21 A. That is true, sir.

22 Q. Excellent.

23 We can go back to the beginning of
24 Exhibit 7. At no point -- in fact, look at the
25 entirety of the document. At no point in this

1 document anywhere does it indicate that a copy of
2 this document went to Andy Birchfield, does it?

3 A. Does the letter state that?

4 Q. Yes.

5 A. No.

6 Q. Wonderful.

7 If you look at paragraph one, page
8 7 -- 62 -- Plenary Hearing 62. I'll give you both
9 cites. It's the exhibit and the cite number. It's
10 the second to last sentence. It says: "For Legacy
11 to enter into this transaction, the acquired talc
12 liable entities of J&J would be required to hold
13 assets with a present value of \$19 billion, or such
14 greater amount as determined by J&J's independent
15 auditors to remove from J&J's financial statements
16 the noncash charge for talc-related liabilities."

17 Do you see the sentence to which I
18 refer?

19 A. Yes, sir.

20 Q. Now, you spoke earlier with Mr. Brody
21 about going to an auditor. Pricewaterhouse is the
22 auditor, correct?

23 A. Yes, sir.

24 Q. Who did you speak with at
25 Pricewaterhouse?

1 A. Steven Johnson.

2 Q. And when you spoke with Steven
3 Johnson, approximately what month was it?

4 A. It was approximately -- it was
5 sometime between the September 11th meeting that we
6 had with Mr. Birchfield and Doug Dachille, with our
7 treasurer, and the response to -- that we received
8 from Doug Dachille on September 28th. So it would
9 have been in that time frame, sir.

10 Q. And Mr. Haas, you've lived through
11 this every day. I'm parachuting in for one motion.
12 I want to make sure I've got this right. When you
13 say -- you mentioned a couple of dates. These are
14 all in 2023, the dates you just gave me?

15 A. Yes, they are.

16 Q. Okay. I apologize for that.

17 A. No, no.

18 Q. What exactly did the auditors say in
19 response? Did they give you a written document, or
20 it was only an oral response?

21 A. There was no written document. There
22 was an oral response.

23 Q. Did they give you an email?

24 A. There was no written document. It
25 was an oral response.

1 Q. Okay. And I didn't mean to quibble
2 with you on this, because I didn't know if they had
3 written a memo, or if you're saying it was just a
4 discussion, and that's all you had.

5 A. Yes, sir.

6 Q. Who was on the phone call with you
7 when you had that discussion?

8 MR. BRODY: Your Honor, I'm just
9 going to object. I think we're getting outside the
10 scope of what we're here for today.

11 THE COURT: Thank you.

12 Mr. Pollock?

13 MR. POLLOCK: They opened the door to
14 the auditor's review on direct examination, which
15 they didn't need to do. I've been objecting on
16 scope from the very outset, so I would like a little
17 bit of leeway, but I'll move on quickly after I get
18 this answer.

19 THE COURT: I'll overrule the
20 objection. You know, the door is open. You may
21 pursue it. I don't know -- I'll follow your
22 questions, Mr. Pollock.

23 MR. POLLOCK: And I intend to move as
24 quickly as I can. As you know, on cross, I'm
25 picking pieces and moving forward, so it may not be

1 the smoothest work ever, but I will do what I can.

2 THE COURT: That's all right. You're
3 just saying that's your style.

4 MR. POLLOCK: Thank you, sir.

5 BY MR. POLLOCK:

6 Q. What did you discuss?

7 A. We discussed the proposal set forth
8 by Legacy.

9 Q. And what was their analysis? You
10 said it didn't work, it was a bad idea. What --
11 they said it would never go forward. I can't
12 remember your exact words.

13 Why did Pricewaterhouse think it was
14 a bad idea?

15 A. To my recollection, there was a
16 number of challenges with it. First and foremost,
17 it -- because of the very nature of the talc claims
18 we were facing that had a future component, there
19 was no way, with any certainty, particularly given
20 the adjudications that had happened up to that
21 point, be able to, outside a bankruptcy setting,
22 ensure you got finality with respect to the future
23 claims.

24 Because there's -- unlike bankruptcy,
25 where you have channeling injunctions that can

1 channel by court order future claims to the trust,
2 you don't have that in the MDL. So that was issue
3 number one.

4 Issue number two, we were in a
5 litigation where Mr. Birchfield was leading an
6 opposition to the bankruptcy proposal that we had
7 set forth.

8 And my recollection that another
9 concern of the auditors was that there would no way
10 to reasonably estimate the value in which you could
11 actually avoid a fraudulent chancery motion in that
12 context, given the nature, the particular nature of
13 the allegations that were being made
14 contemporaneously.

15 And so a reasoned auditor wouldn't be
16 in a position to certify the fairness of a -- an
17 amount for the purposes of divesting a -- the talc
18 liability into a particular entity at that point in
19 time.

20 So, sir, to the best of my
21 recollection, those were the issues that were
22 addressed. I think there were some other issues
23 with respect to credibility of the entity that we
24 addressed in certain terms.

25 My recollection is that there was

1 some historical knowledge of Legacy's intent, or
2 Mr. Conlan's intent to do this before that were
3 looked at with askance by the auditor.

4 Q. Do you know why?

5 A. I'm sorry, what?

6 Q. Do you know why?

7 A. Do I know why? I'm giving you my
8 best recollection, sir.

9 Q. I understand that. Fair enough.

10 You mentioned that, at one point,
11 that if J&J -- and I forget the exact line of
12 questioning -- that J&J, at least a portion of it,
13 could be in the red.

14 Do you recall using that word earlier
15 today?

16 A. Yes. What I said specifically was
17 the entity, Johnson & Johnson Consumer, Inc., was
18 the entity responsible for the talc liabilities in
19 the United States prior to any of these divisional
20 mergers and prior to going into the bankruptcy.

21 In 2020, the entire enterprise was in
22 a loss position as a consequence of the talc
23 litigation, notwithstanding that it had a whole line
24 of other valid and viable business opportunities.

25 That is essentially what eventually

1 led to doing the divisional merger, which is called,
2 sort of demeaningly, the Two-Step, because the
3 divisional merger takes the talc liabilities, puts
4 it into a different entity, and this is what the
5 other circuit, the Fourth Circuit cases said is
6 appropriate and have allowed to go forward.

7 What we did is we funded it with more
8 recourse than they had when it was -- the talc
9 liabilities would have had when they were at JJCI
10 with a separate funding agreement. And that is why,
11 in our view, it was an appropriate transaction, and
12 that if we had stayed in the Fourth Circuit where we
13 filed, it would have been allowed to go forward.

14 Different standard, Third Circuit.
15 Now we're going to address it on appeal.

16 Q. So you've made this argument twice
17 now, that the Fourth Circuit got it right, the Third
18 Circuit got it wrong. But the fact is, courses for
19 courses, facts matter, correct?

20 A. Can you ask that again?

21 Q. Let me try it this way.

22 In the Third Circuit's opinion, 64
23 F.4 84 at -- I'll find the page here in a second.
24 It's the court -- the Third Circuit found
25 specifically: J&J has an exceptionally strong

1 balance sheet. At the time of LTL's filing, J&J had
2 well over 400 billion in equity with a triple A
3 rating, 31 billion in just cash and marketable
4 securities.

5 Isn't it true that those facts are
6 not in the cases that were filed in the Fourth
7 Circuit; they don't have an exceptionally strong
8 balance sheet like J&J?

9 A. Actually --

10 MR. BRODY: Your Honor --

11 THE WITNESS: Actually, the way I can
12 answer that --

13 MR. BRODY: Before you do, I just --
14 we're -- I would object, Your Honor. We're getting,
15 I think, now, far afield of focusing on the issues
16 that we're here for today.

17 MR. POLLOCK: Your Honor, I could not
18 disagree more strongly. He has argued twice now on
19 the record: Whoa is me; poor J&J; we can't afford
20 it; if I were only in the Fourth Circuit, I would be
21 able to get away with this.

22 And the Third Circuit squarely said
23 it was not in good faith.

24 THE WITNESS: No, wait.

25 MR. POLLOCK: As general -- let me

1 finish. As general counsel, or assistant general
2 counsel, whatever it is, the fact is the Third
3 Circuit has said that they have an exceptionally
4 strong balance sheet.

5 So, to me, to play to the news, to
6 play to Your Honors and argue that we're going to go
7 bankrupt if we cut the deal that their own experts,
8 which I will get to in a minute, support, I'm
9 entitled to make the argument because he's made the
10 counterargument, repeatedly over my objection
11 regarding scope, we shouldn't be going here.

12 THE COURT: Well, the Fourth Circuit
13 was brought up, the Third Circuit, and difference of
14 opinion, and whether the Supreme Court is going to
15 resolve that split. Clearly, we heard it. Not
16 necessarily heard Mr. Haas say that J&J can't afford
17 it, et cetera, that was the tact that the company
18 decided to take.

19 You addressed it. It was raised on
20 direct. I'm going to permit Mr. Pollock to address
21 those concerns. But let's keep it focused --

22 MR. POLLOCK: I got it.

23 THE COURT: -- with regard to why
24 we're here. I mean, Judge Singh and I are very
25 familiar with what happened in the Fourth Circuit,

1 what happened in the Third Circuit. Judge Ambro's
2 decision runs through this decision, the author of
3 the Third Circuit.

4 So if can get back to how that plays
5 in and addresses why we're here, Mr. Pollock, I
6 think we would be all better suited. But I'll give
7 you that opportunity to address it.

8 THE WITNESS: And, Your Honor, I can
9 squarely address this issue, discussion, quite
10 clearly and shortly and succinctly.

11 THE COURT: Do you need the question
12 rephrased?

13 THE WITNESS: No, I got it.

14 You're misreading the decision and
15 you're wrong on the facts because, first of all, the
16 J&J wherewithal in the context of the Third Circuit
17 decision that came down in January of 2023 concerned
18 whether and to what extent they would be able to
19 fund pursuant to the funding agreement, which I had
20 mentioned. That was J&J providing supplementary
21 funding. It has nothing to do with whether the
22 entity, JJCI, could have gone into bankruptcy alone
23 because it was red.

24 And, in fact, that's why we say that
25 our transaction was extraordinarily in good faith.

1 What happened in that decision, the Third Circuit
2 said because in its view there was an imminent
3 financial distress because of that particular
4 backstop, then the bankruptcy proceeding of the new
5 entity, LTL, could not go forward.

6 In the Fourth Circuit, there is, in
7 fact, a backstop by viable healthy parent companies,
8 too. In those cases, though, the Court didn't apply
9 an imminent financial distress standard. The Court
10 in the Fourth Circuit looked to whether and to what
11 extent the bankruptcy proceeding provided a
12 reasonable way to resolve the mass tort liability
13 that involved a future component and said this was
14 an appropriate use of the bankruptcy process.

15 And in the Fourth Circuit, the first
16 question is whether there's subjective bad faith,
17 and the second question is whether there's objective
18 futility. And in both cases, the Fourth Circuit
19 said, no, there is no subjective bad faith, and yes
20 -- and no, there is no objective futility because of
21 the funding agreement. So it actually worked in
22 their favor, so that's the relevant facts.

23 In the Third Circuit, because they
24 didn't apply this subjective bad faith standard --
25 and, in fact, the Third Circuit noted in the

1 decision that was no subjective bad faith, and the
2 Bankruptcy Court has found that there's no
3 subjective bad faith by J&J.

4 So what the Court actually held was,
5 by doing the right thing -- and the Court noted that
6 in the footnote -- I believe it's footnote 27, for
7 those who people who might want to remind me -- that
8 it was kind of ironic that by doing the right thing
9 and providing the funding, they couldn't meet this
10 new standard of imminent financial distress.

11 But my view on what the difference is
12 in the Third Circuit from the Fourth Circuit were
13 entirely correct and accurate, and I believe you're
14 misconstruing the Third Circuit's decision.

15 MR. POLLOCK: Your Honor, did he
16 mention that they would be in the red? I believe
17 the Third Circuit, at page 106 --

18 THE COURT: JJCI --

19 THE WITNESS: JJCI.

20 THE COURT: -- would be in the red.

21 MR. POLLOCK: Well, the Third Circuit
22 talks about Old Consumer and New Consumer. So they
23 are looking at it differently than the way Mr. Haas
24 is looking at it.

25 My only point is really simple. The

1 Third Circuit looked at it and said you've got 31
2 billion in cash in marketable securities. That is
3 not being in the red.

4 But, if you will, I will move on.

5 THE WITNESS: I can explain, Your
6 Honor. That -- you're right. You hit it. They
7 ditched the new entity that has the funding
8 agreement that he's referring to, and there's a
9 distinction, obviously, between the Old and --

10 THE COURT: Just as a footnote here
11 that those company differentials played a large
12 measure in motions before our courts, so that's not
13 foreign to us, Mr. Haas.

14 THE WITNESS: Thank you. Thank you,
15 Your Honors.

16 BY MR. POLLOCK:

17 Q. You're familiar with two people,
18 Mr. Mullin and Mr. Bell.

19 UNIDENTIFIED: We can't hear you like
20 we did earlier.

21 THE WITNESS: Should I -- I can try
22 moving it over here, if that helps. Does that help
23 you guys? It may be off.

24 COURT CLERK: It's fine. It's fine.

25 THE COURT: It looks fine from our

1 technical standpoint.

2 COURT CLERK: Yeah, I'm fine.

3 They're not microphones you can hear through the
4 building. It's -- they're just microphones for me.

5 THE COURT: Okay.

6 THE WITNESS: I'll try to speak into
7 this --

8 THE COURT: Try to project to voice,
9 Mr. Haas.

10 THE WITNESS: Yes, certainly.

11 BY MR. POLLOCK:

12 Q. You mentioned earlier in your
13 testimony that you thought Mr. Conlan and
14 Mr. Birchfield were conspiring or working together
15 against you to get the \$19 billion number, correct?

16 A. I'm not sure I used that word, but
17 that's the essence of what my opinion is.

18 Q. Fair enough.

19 Are you familiar with Charles H.
20 Mullin and Gregory K. Bell?

21 A. Yes, sir.

22 Q. And they are both experts, right?

23 A. Yes, they are.

24 Q. And they're both experts retained by
25 J&J, correct?

1 A. Yes, they are.

2 Q. And they are both experts who
3 provided expert reports to Michael Kaplan, Judge of
4 the Bankruptcy Court, right?

5 A. Yes, they are.

6 Q. And as Mr. Bell says, that the top --
7 the range to resolve -- and this is page 4 --
8 resolve to 11 to 21 billion dollars --

9 A. Sir, what are you referring to?

10 Q. I'm referring to the Bell report at
11 page 4. It's the Bell report of June 7th, 2023.

12 A. What tab is that?

13 Q. You read that at the time of the
14 document --

15 MR. BRODY: He has a copy of it?

16 MR. POLLOCK: I do not. You've seen
17 this. I'm not required to give you a copy of the
18 document, sir.

19 BY MR. POLLOCK:

20 Q. Are you telling me here today that
21 you did not review this report at some point in your
22 life?

23 A. Sir, I'm not telling you that --

24 MR. BRODY: That's a different
25 question.

1 A. -- one way or the other. I don't
2 know what report you're referring to, and I do not
3 know the context of the statement, and I would
4 appreciate it if I could at least get a copy.

5 Q. So you're telling me that as the
6 person in charge of products liability for J&J, when
7 there's are a submission by two experts going to
8 Michael Kaplan, Judge Kaplan, that you did not
9 know -- you did not review those reports before they
10 were submitted to the Court?

11 A. I didn't testify to that, sir.

12 Q. I didn't -- I didn't ask you what --
13 you keep on reframing my questions. I'm asking you
14 a simple question: Are you telling me you did not
15 review those reports before they were filed with
16 Judge Kaplan?

17 MR. BRODY: Your Honor, that's a
18 separate question from the question he asked
19 previously.

20 THE COURT: Well, it was. What's the
21 question you want to ask?

22 MR. POLLOCK: I will ask a brand new
23 and clean one.

24 BY MR. POLLOCK:

25 Q. You're familiar with these two

1 gentlemen, Mr. Mullin and Mr. Bell, correct?

2 A. Yes. They are both experts of
3 Johnson & Johnson who provided, to your point,
4 expert reports in connection with different motions
5 at different times in the proceeding. So, I'm not
6 sure which motion -- which expert reports you're
7 referring to. But they both have submitted expert
8 reports in connection with the proceedings and cases
9 before Judge Kaplan.

10 Q. And you care deeply about this case,
11 don't you?

12 A. The...

13 Q. LTL matter.

14 A. I -- I fundamentally feel very
15 strongly about the talc claims because having had --
16 every dime that does not go to doing what we do in
17 the regular course of business, Mr. Pollock, which
18 is saving people's lives, is a dime that could have
19 been used to save another person's life.

20 And I think anyone who has faced
21 that, and faced the diseases that we attempt to cure
22 on a daily basis, would feel as strongly as I do
23 about this case because, in my view, the talc
24 litigation is entirely unwarranted, unmerited, and
25 is depriving the company from the funds that it can

1 be using to actually save lives.

2 So I care deeply about this case
3 because our number one principal and our credo is to
4 do what's right for patients.

5 Q. Excellent.

6 So you care deeply about the case,
7 and the fact is every day you delay, J&J earns
8 interest on the money it has not paid, correct?

9 MR. BRODY: Your Honor, are we going
10 to -- I'm going to object, Your Honor. Is this
11 going to turn into an examination about the
12 potential -- we're -- it seems like this is now a
13 hearing about the fairness of one particular
14 settlement offer or another, as opposed to the
15 issues the Court is facing on disqualification.

16 MR. POLLOCK: Judge, they address
17 directly Mr. Brody -- Mr. Birchfield, and they made
18 the point, pointedly, during direct examination that
19 Andy's sole motive was: I could get a few more
20 shekels, I could get a few more dimes if we went
21 this way, and I make more money.

22 That came out of this witness' mouth.
23 That's exactly what he did. He was doing it to
24 attack my client's credibility. And Mr. Brody
25 instigated it by saying, going, What happened in

1 that testimony. I'm entitled to respond, Your
2 Honor.

3 THE COURT: I'll overrule the
4 objection. You can go down that road, Mr. Pollock.
5 Remember, we're not a jury.

6 MR. POLLOCK: I understand.

7 THE COURT: And there are -- you
8 know, we can discern. So I think you've made your
9 point with regard to the difference of whatever fees
10 may be available to your client in bankruptcy versus
11 the MDL or MCL.

12 MR. POLLOCK: Fair enough.

13 THE COURT: Okay.

14 BY MR. POLLOCK:

15 Q. Let me close with one last point,
16 then. Isn't it true that your own experts, Mr. Bell
17 and Mr. Mullin, opined that the range of resolution
18 that was reasonable would be somewhere between 11
19 and 21 billion dollars?

20 A. No, that's not right.

21 Q. Okay. So you're saying these reports
22 are not correct?

23 A. I'm saying, you don't understand what
24 the reports say, and you are erroneously
25 characterizing the reports.

1 Q. I will let the reports speak for
2 themselves.

3 You heard the number 11 to 21 billion
4 dollars, haven't you, in these reports?

5 A. You're talking about --

6 THE COURT: Could you mark for the
7 record, at least for identification --

8 MR. POLLOCK: Absolutely. I will
9 mark for identification the June 7, 2023, Bell
10 report, which is on page 4. And I'll mark it for
11 identification.

12 What would you like it marked as,
13 Judge? Plaintiff's?

14 THE COURT: Why don't you go P-1.

15 MR. POLLOCK: P-1.

16 - - -

17 (P-1, marked for identification.)

18 - -

19 BY MR. POLLOCK:

20 Q. And it says the Mullin report also
21 estimates the total present value --

22 MR. BRODY: Your Honor, I'm sorry.

23 THE COURT: Mr. Brody.

24 MR. BRODY: If he's going to be
25 reading from the report for his questioning, I think

1 I should get a copy, and I think Mr. Haas should
2 have a copy, as well.

3 MR. POLLOCK: Well, there's nothing
4 in the court rules, respectfully, Your Honor, that
5 requires me to give him a copy.

6 THE COURT: For cross-examination,
7 no. But I'm just looking at, what are we marking
8 for identification purposes? So P-1 is the 6/7/23
9 Bell report.

10 MR. POLLOCK: And P-2 would be the
11 June 7th Charles H. Mullin report, and that is at
12 pages 3 and 44. And I'll give Mr. Brody my own
13 copy.

14 - - -

15 (P-2, marked for identification.

16 - - -

17 THE COURT: What is the Mullin
18 report?

19 MR. POLLOCK: It's the Mull --
20 Charles Mullin, M-U-L-L-I-N, not E-N, June 7, 2023,
21 filed with Judge Kaplan, and I'm referring
22 specifically to page 3 and to page 44.

23 THE COURT: So your questioning
24 Mr. Haas on those reports. He hasn't seen those, or
25 at least his familiarity is not as clear today as it

1 was, perhaps, when he saw it.

2 So let's have the -- you're going to
3 ask him questions --

4 MR. POLLOCK: Yes, sir.

5 THE COURT: -- with regard to those
6 two exhibits?

7 MR. POLLOCK: And my only question is
8 this. Actually, he didn't say he hasn't seen them,
9 so I'm not quibbling with you, but I --

10 BY MR. POLLOCK:

11 Q. Mr. Haas, am I correct that these
12 reports you reviewed before they were filed with the
13 Court?

14 A. If you're referring to -- I would --
15 for the purposes of moving along, Your Honor, I
16 review most of the expert reports that get
17 submitted, so I would presume I did. I don't know
18 which specific ones he's referring to, because there
19 were quite a few submitted by --

20 UNIDENTIFIED ATTORNEY: We can't hear
21 you.

22 THE WITNESS: So there were quite a
23 few submitted by those two experts in this context.

24 THE COURT: Well, you know, in all
25 deference to those folks in the crowd, as long as

1 the Court can hear, if you could project your voice,
2 that is what's most important. We're not playing to
3 any audience, everyone. You're entitled -- you can
4 reconfigure your seat, if you want to hear, but, you
5 know, that's -- the microphones are and our
6 acoustics are what they are.

7 So please continue, Mr. Haas.

8 THE WITNESS: And Your Honor, just if
9 I may respond to the other question, which I think
10 the record might be a little confused on whether I
11 responded.

12 He asked whether J&J's earning
13 interest on monies that are not otherwise paid out.
14 We are not earning interest on monies that are not
15 otherwise paid out. We are investing our monies
16 into research and development to create new drugs.

17 So there's no money sitting aside
18 that we're earning interest on for the purposes of
19 avoiding a settlement payment. So that statement is
20 entirely incorrect.

21 What we are doing is incurring
22 hundreds of millions of dollars a year litigating
23 the talc case. That isn't judgments. We have
24 one -- or there has been two cases tried this year,
25 they're both mistrialed, and so -- on the grounds

1 that they haven't gotten a unanimous verdict.

2 So they have not won a single case
3 this year, but we are spending hundreds of millions
4 of dollars on pure expenses of litigating these
5 cases, which aren't otherwise going to research and
6 development for new client -- new drugs for the
7 patients.

8 BY MR. POLLOCK:

9 Q. And if you continue to litigate, it
10 could be the difference between nine billion dollars
11 and 19 billion dollars, right? Your hope is that
12 you can save 10 billion dollars and litigate this
13 matter successfully and resolve it at 9 billion?

14 A. No, sir. I testified on direct that
15 the evidence in the record in the bankruptcy is that
16 if we were to litigate these cases at the rate we
17 were litigating at the time of the first bankruptcy,
18 it would take 3,800 years to get through the cases,
19 thereby depriving most claimants of any recovery,
20 whatsoever.

21 And the cost of the -- the pure
22 expense of litigating those cases, not paying
23 judgments, but the expense alone would be \$190
24 billion. So that would be expenses that go to
25 lawyers that don't go to patients.

1 Q. So it sounds like \$20 billion would
2 be a good deal?

3 A. That is not the logical conclusion
4 one would draw from that statement.

5 Q. Fair enough. Let me move on.

6 Weil Gotshal, Jones Day. Am I
7 correct that Weil Gotshal and Jones Day were your
8 primary lawyers in the Imerys and LTL matter; Jones
9 Day with regard to the LTL approach of the Texas
10 Two-Step?

11 A. Primary lawyer. So, Jones Day was
12 the bankruptcy counsel of record for the LTL
13 matters; Weil Gotshal was the bankruptcy counsel of
14 record for the Imerys and Cyprus matters, I believe.

15 In terms of primary counsel, again,
16 it goes to your question earlier. We had Orrick
17 counsel, we had Faegre Drinker counsel, we had
18 Skadden counsel, we had King & Spalding counsel, we
19 had other counsel, all that participated in these
20 calls, and each were there because they contributed
21 significant value to the deliberations.

22 So, when you say "primary," it's --
23 those two were the ones that were responsible for
24 submissions into each court. But each and every one
25 of those people on that call provided significant

1 input and advice with respect to those matter.

2 And on the bankruptcy issue, sir, and
3 on the mass torts issue, Mr. Conlan purported to be
4 the premier expert in the world, and it's in writing
5 in the submissions that are in the record that that
6 was his position.

7 Q. If I were to look at it from a
8 billable spend, am I correct that the numbers spent
9 for J&J for legal counsel at Weil Gotshal on Imerys
10 would dwarf anything spent by Mr. Conlan?

11 A. On a per-lawyer basis, I'm not sure
12 that's true, but on an aggregate basis, I would say
13 yes.

14 Q. So the total spend, the total amount
15 spent, hundreds of millions of dollars to Weil
16 Gotshal, roughly two million bucks to Mr. Conlan?

17 A. I will have to check the actual
18 numbers to give you that answer. I think your prior
19 statement was probably more the --

20 Q. Excellent.

21 A. -- most --

22 Q. And with regard to Jones Day, Jones
23 Day was the one who proposed and was driving the LTL
24 to the Texas Two-Step, correct?

25 A. No.

1 Q. Who was driving it?

2 A. Me.

3 Q. Okay. Who -- are you a bankruptcy
4 expert?

5 A. I do not purport to be a bankruptcy
6 expert, but I am the one who is responsible at J&J,
7 first and foremost, for the concept; and secondly,
8 for the decision whether to file; and thirdly, how
9 to go about structuring that filing with the advice
10 of Mr. Conlan sitting right behind you.

11 Q. And didn't Mr. Conlan actually tell
12 you at any point in time he did not think the LTL
13 Texas Two-Step was a good idea?

14 A. Actually, quite to the contrary --

15 MR. BRODY: Object --

16 THE WITNESS: I'm sorry.

17 MR. BRODY: I'm going to object, Your
18 Honor, because if we're going to ask about the
19 substance of communications --

20 MR. POLLOCK: Fair enough.

21 MR. BRODY: -- between Mr. Conlan and
22 Mr. Haas while Mr. Conlan was representing J&J as
23 outside counsel, that is privileged, and I have a
24 privilege objection to that question.

25 THE COURT: Sustained.

1 MR. POLLOCK: Okay. Fair enough.

2 BY MR. POLLOCK:

3 Q. You have provided no emails, and no
4 billing records, no photos, anything showing
5 Mr. Conlan and Mr. Birchfield working together, have
6 you, other than what you have in the record here
7 today?

8 A. Other than what's in the record, have
9 we provided anything into the record, no.

10 Q. No. Let me put it this way. You
11 have -- you said, in your initial certification --
12 it's Exhibit 1, if you want to see it -- you say you
13 have reviewed. When you say you have reviewed, is
14 it you personally reviewed, or is it the "royal we"
15 have reviewed, and these other people review them
16 and report up to you?

17 MR. BRODY: I'm sorry. What are you
18 referring to, please?

19 MR. POLLOCK: Exhibit 1.

20 THE COURT: The declaration.

21 MR. BRODY: Which part, though?

22 BY MR. POLLOCK:

23 Q. On the declaration, "I became
24 familiar," "billing submitted," "reflects," "time
25 entries reflect," paragraph 5, "these billings

1 sent," "records show."

2 They are all written in the passive.

3 So the question I'm asking you, sir: Who actually
4 reviewed the documents?

5 A. I reviewed them.

6 Q. So how do you actually get the
7 billing records?

8 A. I asked Mr. White, who is sitting in
9 the back of the courtroom, who is in charge of the
10 billing records for the product liability group to
11 supply them to me, and he did.

12 Q. And did you also ask for all emails
13 and memoranda that Mr. Conlan had written?

14 A. In connection with this matter?

15 Q. Yes, sir.

16 A. I do not know whether I made that
17 specific request. I do recall asking for records
18 that he had provided, and communications, memo. I'm
19 not exactly sure how I phrased it, sir. The gist of
20 it was, I did ask for documents that Mr. Conlan had
21 sent and drafted.

22 Q. Did you reach out to the law firms
23 that you worked with, Jones Day, Weil Gotshal,
24 Faegre, and ask them, Hey, do you have any documents
25 regarding what Mr. Conlan worked on while he was at

1 Faegre Benson -- or Faegre Drinker?

2 A. I don't believe I -- I certainly did
3 not do that. I don't believe anyone did, no.

4 Q. Okay. And so with regard -- and you
5 have produced to the Court here all the documents
6 you have regarding any communications between
7 Mr. Conlan and Mr. Birchfield, correct?

8 A. I don't know that I could say that
9 specifically, because he might have been on
10 submissions to the Court, where they are both on
11 there. I don't think that would be -- I don't think
12 that was the purpose of the submissions.

13 The purpose of the submissions were
14 designed to provide an indication of what Mr. Conlan
15 did to demonstrate that he worked on the same
16 matters and the same issues that he's now taking
17 positions with Mr. Birchfield that are averse to
18 J&J.

19 So, the intent wasn't to do a
20 comprehensive dump of every document that the two
21 might have been on. So I would expect, sir, quite
22 frankly, I would expect that there are documents
23 that involve transmission of court documents, for
24 example.

25 But the answer is no, that wasn't the

1 objective of this selection.

2 Q. You've used -- and I don't have your
3 exact words, so I apologize. It's either
4 "conspire," "work together," or, you know, "joining
5 forces against J&J." It's all the same concept.

6 If you had any proof that Mr. Conlan
7 had disclosed confidential and privileged
8 information to Mr. Birchfield, am I correct you
9 would have produced it to the Court for the hearing
10 today?

11 A. Sir, I think I addressed this on
12 direct, which is to say the record demonstrates that
13 as early as April 20th, 2023, Mr. Conlan and the
14 Beasley Allen law firm were having myriad
15 discussions relating to a settlement proposal and
16 including a structured optimization proposal; first,
17 for discussion with the mediators, and thereafter
18 for presentation in connection with opposing our
19 plans.

20 So the record demonstrates that. The
21 record demonstrates that the proposals have the same
22 and implicate the same matters and the same issues
23 that Mr. Conlan represented us and gave us advice on
24 and had communications with inside counsel and
25 outside counsel.

1 And as I testified, those
2 conversations necessarily are imbued with
3 Mr. Conlan's confidential, privileged, and work
4 product information that he obtained from Johnson &
5 Johnson. So I disagree with your proposition.

6 Q. Excellent.

7 So with regard to -- we'll go to
8 "necessarily imbued" in a second. Let's assume for
9 the sake of argument that Mr. Conlan understands RPC
10 1.9, and that he understands he has an ongoing duty
11 to keep and maintain confidences that belong to J&J.
12 I just want you to assume that for one second.

13 What facts do you have in your
14 possession, custody, or control that he ever shared
15 any of those confidences with Mr. Birchfield or
16 Beasley Allen? I understand your theories. I
17 understand your concerns. What facts do you have?

18 A. I just told you that.

19 Q. The facts --

20 A. I just told you -- I just told you
21 the facts that I have. In the very nature of the
22 communication, the very nature of the position where
23 the two are collaborating on the same issues, where
24 you have a side-switching counsel who is now working
25 with our adversary on the same matters and the same

1 issues.

2 And I fundamentally disagree with
3 your proposition which is embedded in your question,
4 as to what is the requisite showing under the rule
5 of 1.9, as well.

6 But fundamentally, I've already
7 answered your question.

8 Q. Okay. So I am correct in
9 understanding that the totality of the facts that
10 you have in your possession, custody, and control,
11 that Mr. Conlan ever shared anything that was a
12 secret J&J piece of information is in the binder in
13 front of you?

14 MR. BRODY: Objection.

15 THE WITNESS: Once again, no.

16 MR. BRODY: Sorry.

17 It mischaracterizes his testimony,
18 but he can answer.

19 THE WITNESS: That would be no. That
20 mischaracterizes my testimony.

21 BY MR. POLLOCK:

22 Q. Okay. So what other documents you
23 got?

24 A. I just told you that it's both --
25 it's based upon my testimony and the documentation

1 and the nature of the relationship, and I just
2 walked through with you, as I did on direct, what
3 was the basis for my view of the nature of the
4 relationships which necessarily had demonstrated an
5 egregious breach of Mr. Conlan and Mr. Birchfield's
6 ethical obligations.

7 You can't have someone who is sitting
8 on that side of the table walk to that side of the
9 table and say, Oh, I didn't tell them anything, but
10 I'm going to work with him against you on that side
11 of the table. That's an egregious side-switching
12 violation of the ethics.

13 So if you're asking my opinion
14 because you --

15 Q. I'm asking you for facts, sir.

16 A. You're presenting me with a
17 hypothetical, sir.

18 Q. Sir, I'm asking for facts.

19 A. Sir, you've presented me with a
20 hypothetical.

21 Q. I did not. I'm asking --

22 A. If you ask that, I won't answer.

23 Q. -- for facts. That was two questions
24 ago. So, go ahead. I'm asking for facts.

25 THE COURT: Calm down here. All

1 right.

2 Pose your question, Mr. Pollock.

3 MR. POLLOCK: Yes, sir.

4 BY MR. POLLOCK:

5 Q. You say "necessarily imbued." You
6 have used that phrase several times today,
7 "necessarily imbued."

8 Necessarily imbued, is that another
9 word for the appearance of impropriety, it looks
10 wrong, it doesn't sound right?

11 A. No.

12 Q. Excellent.

13 What's the different between
14 "necessarily imbued," which I have never seen in the
15 ethics rules, and the "appearance of impropriety"?
16 What's the distinction?

17 A. It's a distinction that I, in
18 answering questions that were posed to me, which you
19 asked, as to why the -- Mr. Conlan's and
20 Mr. Birchfield's conduct is improper.

21 My point simply is, is when you're
22 having conversations that concern the same matter
23 and the same issues that Mr. Conlan had years of
24 discussions with me about, and with my team and with
25 the J&J team and with outside counsel, and to go and

1 have conversations about the same issues with my
2 adversary undermines the entire adversarial process,
3 because no matter how he construes it, his
4 communications must contain our privileged work
5 product and attorney-client communications because
6 he can't separate that out in his neurons.

7 Any single view that he espouses,
8 necessarily, yes, is imbued with the conversations
9 we've had.

10 Q. You have no evidence, sir, that he
11 was ever -- Mr. Conlan ever worked for Beasley
12 Allen, right?

13 A. At --

14 Q. He was never an associate or partner
15 at Beasley Allen.

16 A. I have no evidence that Mr. Conlan
17 was an associate or partner at Beasley Allen.

18 Q. Excellent.

19 You have no evidence that he ever was
20 retained by Beasley Allen?

21 A. No, I have no evidence that he
22 actually received a pay check from Mr. Birchfield,
23 if that's what you mean by --

24 Q. Or he had a written agreement from
25 Beasley Allen. "I'm going to hire you, Mr. Conlan.

1 You're a great lawyer. You worked at Sidley Austin
2 for 32 years. I'm hiring you." You've got no such
3 document, correct?

4 A. I have no such document. The
5 position we have taken very consistently is that he
6 is collaborating, he's joined forces with, he's
7 worked with, all the ad -- you know, adjectives
8 you've used in order to prepare and present and
9 advocate for a settlement resolution that is
10 directly adverse to that of his former client.

1 Q. Even though your own experts are
2 saying that number sounds pretty good to us?

3 A. That is entirely false, unfounded,
4 lacks foundation, and misconstrues the evidence in
5 the record.

16 Q. You should be on this side. I mean,
17 the -- if you're going to object, sir. I'm asking
18 you questions. I don't need -- Mr. Brody is very
19 capable of objecting.

20 MR. BRODY: Your Honor.

1 THE COURT: But I think Mr. Haas, if
2 he doesn't understand the question, is explaining
3 why he doesn't understand the question.

24 MR. POLLOCK: Fair enough.

25 MR. BRODY: Yeah, and I would move to

1 strike the commentary, Your Honor, because Mr. Haas
2 was answering the question.

3 THE COURT: Judge Singh and I are
4 able to separate that type of information.

5 BY MR. POLLOCK:

6 Q. One of your assumptions, sir, is that
7 he was a lawyer representing a client when he went
8 to Legacy Solutions. Isn't that core to your
9 analysis?

10 A. No, it's not.

11 Q. So, because RPC 1.9 says, A lawyer
12 who has represented a client in the matter shall not
13 thereafter represent. So you've just -- isn't it
14 true that he has to be a lawyer representing a party
15 in the dispute?

16 A. No, that's not true.

17 Q. Excellent.

18 A. That's not true because your
19 obligations, your ethical obligations as a lawyer do
20 not stop when an engagement ends. You own them for
21 life, Mr. Pollock.

22 Q. Well, let's just be really clear on
23 this. When you say "you own them for life," you're
24 talking about RPC 1.6. You're talking about --

25 A. I'm talking about --

1 Q. -- confidentiality of information,
2 correct?

3 A. No, no. I'm trying not engage in an
4 argument. So I will succinctly say no, and then
5 I'll reserve --

6 THE COURT: Well, let's hear the
7 question.

8 Mr. Pollock.

9 BY MR. POLLOCK:

10 Q. Okay. So RPC 1.6 talks about a
11 lawyer's ongoing duty to maintain confidences. Are
12 you familiar with that rule?

13 A. I'm familiar with the rule, sir.

14 Q. Excellent.

15 And in this case, when I asked you
16 whether Mr. Conlan shared information with
17 Mr. Birchfield, you immediately went to 1.9, duties
18 to former clients, and that requires him to have
19 been counsel. And then I asked you whether he was a
20 lawyer representing a client in the matter, and I
21 proffered to you he was not.

22 Isn't it true he is a businessman
23 representing the interest of Legacy Solutions?

24 A. So you have a large amount of preface
25 to the question, and I fundamentally disagree with

1 your interpretation of the ethical laws, sir.

2 Q. Okay.

3 A. If your question is whether or not
4 our position is whether Mr. Conlan is acting as an
5 attorney or not in his current role, the answer is
6 it doesn't matter. I don't have the foundation to
7 say whether he purports to.

8 But if you're asking whether that is
9 dispositive of my position, of our position, the
10 answer is no.

11 Q. Well, you asked -- you accused him of
12 being a side-switching lawyer. Those were your
13 words. But in this case, he's a businessman at
14 Legacy Solutions after he walked out the door at
15 Faegre.

16 So I want to know: How can he be a
17 side-switching lawyer if he is not representing a
18 client in the matter, other than himself?

19 A. He is a lawyer that has continuing
20 obligations, who has switched sides and is now
21 working with an adversary on the same matter and the
22 same issues for which he provided legal advice,
23 confidential advice, obtained privileged and work
24 product information. That is a side-switching
25 lawyer, in my view.

1 Q. And other than the documents you have
2 in the record today, you have no -- and your
3 testimony that you have given with your opinions,
4 you've got no other evidence that Mr. Conlan ever
5 shared a J&J confidence with Mr. Birchfield,
6 correct?

7 MR. BRODY: Objection, Your Honor.
8 We have been through this subject three times now.

9 THE COURT: It's been posed. I mean,
10 you know, to the extent there's a different answer
11 that you're looking for, Mr. Pollock.

12 MR. POLLOCK: I'm prepared to move
13 on, Your Honor.

14 THE COURT: Okay.

15 BY MR. POLLOCK:

16 Q. Alliances. You talk about alliances
17 and joining forces. That's what you talked about
18 with Mr. Birchfield and Mr. Conlan. Isn't it true
19 that the second Mr. Birchfield or the talc creditor
20 claimants committee signs a deal, that it -- let me
21 do it this way.

22 Isn't it true that the second that --
23 if J&J were to sell the liabilities to Legacy and
24 Legacy were to buy them, isn't it true, at that
25 moment, Mr. Birchfield, Beasley Allen, the entire

1 talc credit claimants committee suddenly becomes
2 adverse to Legacy?

3 A. First of all, I don't understand your
4 hypothetical, and I -- from what I do understand, I
5 disagree. But I'm not really sure of your
6 hypothetical.

7 Q. Sure. Let me clear it up.
8 Legacy Solutions proposed to buy the
9 claims from J&J, correct?

10 A. Legacy Solutions has proposed a
11 number of different resolutions that it terms
12 broadly with -- it falls broadly within the bucket
13 of what they call structural optimization. And that
14 can involve, fundamentally, and we've been over this
15 a little bit, but it involves putting the talc
16 liability into another entity and providing some
17 funding for it.

18 But then, what happens next, whether
19 or not you take that entity to put it into
20 bankruptcy, whether you put ovarian claims only into
21 bankruptcy and not the mesothelioma claims, whether
22 or not you even do anything with bankruptcy, whether
23 or not you take it and you basically sell it so that
24 it is a standalone entity with, still, exposure from
25 the future claimants is an option.

1 So there are a number of different
2 alternatives that can come into play, each of which
3 we had many discussions with Mr. Conlan about the
4 risks/benefits, costs, pros/cons, advantages and
5 disadvantages while he was our counsel.

6 And so, in coming up with a Legacy
7 proposal, you know, when he came to us, he proposed
8 a number of alternatives within the concept of this
9 structured optimization, sir.

10 So, I hope that answers your
11 question. I'm not exactly sure where you're going.

12 Q. I don't think it answers my question
13 even remotely, but I'll ask it again.

14 If we look at Exhibit 7 -- could you
15 pull that up, please?

16 A. Yes, sir.

17 Q. Let me know when you're ready.

18 A. I'm looking at number 7.

19 Q. Wonderful.

20 First paragraph, second sentence:
21 "For Legacy to enter into this transaction, the
22 acquired talc liabilities of J&J would be required
23 to hold assets with a present value of \$19 billion,
24 or such greater amount as determined by J&J's
25 auditors remove from J&J's financial statements the

1 noncash charge for talc related liabilities."

2 Do you see that sentence?

3 A. I do, sir.

4 Q. In plain English, doesn't that mean
5 if Legacy buys that -- those claims, the
6 talc-related liabilities, that that would come off,
7 if it worked, it would come off of J&J's balance
8 sheets, right?

9 A. Okay. First, to be clear, this is
10 not the only proposal. You have to go back to
11 the --

12 Q. I'm asking about --

13 A. You're switching from your prior
14 question.

15 Q. Sir, I'm asking about this proposal.

16 A. Okay.

17 Q. I'm asking about page --

18 A. Sir, if you're talking about this --

19 Q. -- that's in front of you.

20 A. -- and the question is whether or not
21 this will work --

22 Q. No, that is not the question.

23 Isn't the proposal that once they pay
24 -- if they buy the liabilities for roughly \$19
25 billion, that, at that point, it would remove from

1 J&J's financial statements the noncash charge for
2 talc-related liabilities? That's Legacy's idea.

3 A. And you're asking me whether that
4 works?

5 Q. I'm asking whether that's what Legacy
6 proposed to you on November 9, 2023.

7 A. That's the words are on this page.

8 Q. Excellent.

9 And they proposed it to you, correct?

10 A. They sent this to the CEO of Johnson
11 & Johnson. But, yes, if you're saying "you" at
12 large Johnson & Johnson, that is the particular
13 offer they're stating at this particular point in
14 time.

15 Q. And if J&J were to accept this deal,
16 the Legacy proposal, the minute that J&J accepts the
17 Legacy proposal, now Legacy, Mr. Conlan, suddenly
18 become adverse to the talc claimants committee; do
19 they not?

20 A. No, that's wrong.

21 Q. Why is that wrong?

22 A. I can explain why that's wrong.

23 So, a part of the proposal here is
24 whether and to what extent this is a means of
25 providing compensation to the lawyers that are the

1 ones that are overseeing the talc claims. So,
2 particularly, the sort of nefarious aspect of this
3 and the \$19 billion is it's not all going to
4 claimants.

5 First and foremost, Mr. Conlan's
6 proposal involves him taking all sorts of managing
7 fees. So this is a compensation structure, number
8 one. Number two, he retains in this proposal a
9 spread of anything that is paid out versus not paid
10 out. So, of the 19 billion, say that's 8.9 gets
11 paid out, he gets to keep the rest. Secondly.

12 Thirdly, there's no grounds to say
13 that this is going to work, because you can -- just
14 as in the bankruptcy, you can have objecting
15 claimants. So, at any point in time, a claimant can
16 object to this on the grounds that it's not a viable
17 transaction, which is, again, a concern raised by
18 the auditors.

19 So I would disagree wholeheartedly in
20 many respects to everything you've said.

21 THE COURT: I think this would be a
22 good time to take our lunch break.

23 MR. POLLOCK: Wonderful.

24 THE COURT: All right?

25 MR. POLLOCK: How long would you

1 like, Judge? I just -- I apologize.

2 THE COURT: Let's come back in an
3 hour.

4 JUDGE SINGH: Perfect.

5 THE COURT: All right.

6 MR. POLLOCK: Thank you, Your Honor.

7 (A recess was taken.)

8 THE COURT: All right. We will
9 continue. All counsel are present.

10 Mr. Haas, you're still under oath.

11 THE WITNESS: Yes, sir.

12 THE COURT: Mr. Pollock.

13 BY MR. POLLOCK:

14 Q. Mr. Haas, if you could go to the
15 binder, Exhibit 2, that would be wonderful. Let me
16 know when you are there.

17 A. I am there.

18 Q. Yes, sir. So Exhibit 2, it's an
19 email from Jim Conlan to you, correct?

20 A. That is correct.

21 Q. And he -- that document is dated
22 August 23, 2022, correct?

23 A. That is correct.

24 Q. And it says in the second paragraph,
25 (as read): I am among those who think the

1 likelihood of a plan confirmation/injunction,
2 skipping a part, in a Texas Two-Step case has gone
3 from low to essentially nonexistent.

4 Do you see that portion?

5 A. Yes, I see that.

6 Q. And there's nothing in there that
7 reflects that that communication originated from or
8 was shared from Mr. Birchfield, correct?

9 A. No, that's exactly what I testified
10 on direct; that Mr. Conlan concealed from, did not
11 disclose to us that he had been having conversations
12 with Beasley Allen since as early as April of 2023
13 regarding alternatives to resolve the talc
14 litigation, and was engaged in discussions on
15 proposals to submit to the mediators.

16 Q. Fair enough. But there's nothing in
17 this document that demonstrates in any way that
18 Mr. Conlan and Mr. Birchfield were discussing
19 whether the LTL Texas Two-Step was a good idea.

20 A. That's, again, that's exactly what I
21 testified on direct; that we had no disclosure,
22 whatsoever, from Mr. Conlan or Mr. Birchfield
23 regarding their alliance and the fact that they were
24 working together without our knowledge, consent, or
25 waiver.

1 Q. So if Mr. Conlan switched hats, he
2 went to Legacy, right, from -- after he left Faegre,
3 correct?

4 A. He did go to Legacy after he left
5 Faegre Drinker. When you say he switched hats, he's
6 now in a different role. He opened up a business
7 where he is purporting to go out and pitch for
8 Legacy structured optimization models, as I
9 understand it.

10 Q. Couldn't say it better myself.
11 So he goes from being a lawyer at
12 Faegre to being a businessman at a company he formed
13 called Legacy, right?

14 A. Right.

15 Q. Excellent.

16 And he -- so -- and in that role, he
17 is not serving as legal counsel for any of Beasley
18 Allen's clients, is he?

19 A. I cannot opine on that one way or
20 the other.

21 Q. Let me try it this way. You have no
22 facts, whatsoever, to support that he was
23 representing Beasley Allen's clients, right?

24 A. In a legal capacity, again, I can't
25 opine on that one way or the other. I can opine

1 that he is, or I can state factually that he is
2 addressing the same matters and the same issues that
3 he addressed when he was our counsel.

4 Q. But I'm asking not about what -- your
5 opinion is it's the same subject matter. I disagree
6 because neither one of us have facts in front of
7 them that they are the same subject matter. But I'm
8 going to put that aside. I'd ask you to do the
9 same.

10 A. I'm not going to --

11 Q. Mr. Haas, I'm asking about the role
12 that he played once he went to Legacy. Was he
13 representing a client?

14 A. Again --

15 MR. BRODY: Objection. That's been
16 asked and answered two previous times now.

17 THE COURT: Mr. Pollock, are you
18 reasking a question because you did not get a
19 satisfactory answer to your question?

20 MR. POLLOCK: Well, the only reason
21 I'm asking a pretty basic question, and I'm getting
22 a lot of "it must be," or "it could be," or
23 "therefore."

24 If you think the answer is already in
25 the record, Your Honor, I do not want to waste your

1 time.

2 THE COURT: No. I think I cut off
3 Mr. Haas, so why don't you pose that question again
4 and let's hear Mr. Haas' testimony.

5 BY MR. POLLOCK:

6 Q. When Mr. Conlan switched from being
7 at Faegre to Legacy Solutions, isn't it true he did
8 not have a client in the LTL litigation?

9 A. If I'm understanding your question,
10 Mr. Conlan stopped representing LTL as a current
11 representation in March 2022. That didn't put an
12 end to his ethical obligations to LTL or J&J, which
13 are continuing. So, in that respect, he did have a
14 client.

15 Q. Let me try it this way. A lawyer who
16 represents a client in New Jersey has to have an
17 IOLTA account. They have to have an account. That
18 is required by the Rules of Professional Conduct.

19 When Mr. Conlan switches from being a
20 Faegre lawyer to being a business guy at Legacy,
21 isn't it true, as a Legacy guy, no longer a Faegre
22 guy, he no longer has to have an IOLTA account
23 because he does not have a client in New Jersey?

24 A. Again, I wouldn't have the foundation
25 to say what account he has. I can -- the question,

1 again, is whether or not he has ongoing obligations
2 to LTL and J&J as his client, the answer is yes.

3 I can't -- sir, I can't sit here and
4 tell you whether Mr. Conlan kept his account up to
5 date.

6 MR. POLLOCK: Your Honor, I'm not
7 asking whether he had an ongoing duty of
8 confidentiality, which is what Judge Singh asked me
9 about before. I've conceded that he does. I'm
10 asking whether he has a client.

11 BY MR. POLLOCK:

12 Q. Because that's -- you have accused my
13 client of violating RPCs, and the RPCs require that
14 Mr. Conlan have a client at the time he's at Legacy.
15 So I'm asking the simple question.

16 A. And I gave you the simple answer to
17 that. I gave you that simple answer to that very
18 question, because you're asking my view on whether
19 he has a client. And my answer is, yes, he does --

20 Q. Excellent.

21 A. -- because he has an ongoing
22 obligation to LTL and J&J. I've answered that three
23 times, sir.

24 Q. So it's your view.

25 A. You asked me for my view, and I gave

1 you the view three times.

2 Q. Fair enough. That's your view,
3 correct?

4 If you go to Exhibit 4, please. Let
5 me know when you're ready.

6 A. I'm at Exhibit 4, sir.

7 Q. Excellent.

8 Exhibit 4, October 18th, this is an
9 email from James Conlan to Duane Van Arsdale, Doug
10 Dachille, and to you and to Andrew White, correct?

11 A. Yes.

12 Q. That document says, "Legacy has the
13 support of lead counsel for of the OC claimants,
14 including Andy Birchfield."

15 Do you see that?

16 A. I do, sir.

17 Q. And it goes on and says, "Andy
18 Birchfield, Doug Dachille and I are prepared to meet
19 with you." Correct?

20 A. That is correct.

21 Q. But it doesn't say what the Legacy
22 proposal is or what's being suggested to J&J, does
23 it?

24 A. I disagree.

25 Q. Okay.

1 A. He ends the paragraph by saying,
2 "Thank you for your efforts to evaluate our proposal
3 to further enhance our solution."

4 So this email is written in terms of
5 an enhancement of the proposal that he has provided
6 and it's conveying that, purportedly, for the first
7 time, he has now gone out and obtained support of
8 Andy Birchfield, when, in fact, what was undisclosed
9 and concealed was that he had been working with
10 Mr. Birchfield since April of 2023.

11 So I disagree with you.

12 Q. So there is a proposal attached to
13 this? I asked you whether there was a proposal
14 here.

15 A. You said there was a proposal.

16 Q. Is there a proposal --

17 A. You didn't ask me whether there was
18 a proposal attached --

19 Q. Is there a proposal attached to this
20 document?

21 A. That's a different question. There's
22 not a proposal attached to this email.

23 Q. Excellent.

24 But there is, on November 7, 2000 --
25 Exhibit 7, I apologize, November 9, 2023, Plenary

1 Rehearing 62. Let me know when you're there.

2 A. I'm at Exhibit 7.

3 Q. Correct. So that has a proposal from
4 Legacy, right?

5 A. No. It has a settlement matrix.

6 Q. Okay. It has a settlement matrix.
7 There's also a lot of discussion about how Legacy
8 would purport to transfer the liabilities from J&J
9 to Legacy, right?

10 A. And there was this -- and if you're
11 talking in terms of proposal --

12 Q. Yep.

13 A. -- there likewise was, in connection
14 with the first meeting, a deck that was provided.

15 Q. Okay.

16 A. So if there's a distinction you're
17 trying to draw between a proposal, sir, I'm just not
18 understanding that distinction, if you're trying to
19 make one.

20 Q. I'm not that smart. All I'm asking
21 is, on Exhibit 4, we have agreed there's no proposal
22 attached. On Exhibit 7, this document has a matrix
23 and it has a series of colloquy, right, a discussion
24 regarding what Legacy would propose to do.

25 Can we agree on that?

1 A. Yes, we can agree on that.

2 Q. Excellent.

3 And then Mr. Birchfield is not part
4 of the -- he's not referred to as a cc, it's not his
5 proposal, there's nothing there that he proposes;
6 right?

7 A. If your position is that when they're
8 referring to the leadership counsel on the -- both
9 the federal MDL and state court cases, if your
10 suggestion is that doesn't refer to Mr. Birchfield,
11 I would disagree, because that's the same language
12 that was utilized in the previous example, exhibit
13 that we just looked at that referred to
14 Mr. Birchfield as that person.

15 So I disagree with that proposal --
16 with that --

17 Q. So let me clean this up. Exhibit 4,
18 there's no proposal attached. We've agreed on that.
19 So we can agree that Mr. Birchfield did not make a
20 proposal on Exhibit 4, right?

21 A. So I disagree, sir. We already -- I
22 disagree with that for the reason previously stated,
23 which was there was a proposal in the email, the
24 previous one, references of proposals.

25 So I disagree with your proposition

1 there.

2 Q. Great. Where in Exhibit 4 does it
3 say "proposal"? Show it to me, please.

4 A. The very first sentence. I just read
5 it.

6 Q. "Thank you for your efforts to our
7 proposal." Is there a proposal attached?

8 A. He's referring back to the
9 previously-made proposal, which is -- was provided
10 in a PowerPoint format. So I disagree, sir.

11 Q. Okay. But you don't have the
12 proposal here, today, right? You have not produced
13 it in this record, right?

14 A. Are you saying what -- are you saying
15 it's in the binder here, today?

16 Q. But you -- there is no -- I thought
17 we'd agreed, apparently not, that in Exhibit 4 there
18 is no proposal attached.

19 A. Now you're asking me a different
20 question, sir. I'm not trying to be difficult.
21 Your saying whether -- you first asked me whether it
22 references a proposal. It does. It says "effort,"
23 "our proposal." And you acknowledged that's in the
24 first sentence. Now you're asking whether it was
25 attached. We've previously agreed, I did not

1 dispute, that there was not a --

2 Q. What is the proposal? In Exhibit 4,
3 what was that proposal?

4 A. It was the proposal that Mr. Conlan
5 presented on September 11th.

6 Q. Excellent.

7 And Mr. Conlan prepared the Exhibit 7
8 -- Exhibit 7, the November 9 proposal, right?

9 A. Again, I disagree with your
10 proposition because in between the 11th of September
11 and November 9th, Mr. Conlan disclosed for the first
12 time that Mr. Birchfield is working with him.

13 And he purports in Exhibit 4 to say,
14 Oh, I'm going to address the issue you asked in the
15 September 11th meeting, which is what was the dollar
16 amount that you're purporting to say would be
17 sufficient for a divisional merger to be effective.
18 He says, Now I've got that because I've got Andy
19 Birchfield.

20 So he's saying he went out and
21 supplemented it, or, in his words, to further
22 enhance it. But what he actually did is, he'd been
23 working on that same thing without telling us since
24 April. And then you go to the 7th, and he uses the
25 same language to refer to Legacy's -- the support

1 that he would have from the leadership counsel on
2 both the federal MDL and state court cases.

3 So I disagree with your proposition
4 that Mr. Birchfield is not referenced in here.
5 That's the continuity. It was the September 11th
6 presentation to the April 18th supplement and
7 disclosure for the first time of Mr. Birchfield's
8 role to the November 9th presentation where he
9 circumvented me so that he could go directly to the
10 board of directors with a proposition that now
11 includes the proposal that Mr. Birchfield had and
12 that he also had represented as the Mass Torts Made
13 Perfect on, I believe it was, October 12th.

14 Q. On exhibit -- Exhibit 6, November 5,
15 can you show me where in this document it says this
16 is a proposal or anything that was recommended by
17 Andy Birchfield for Beasley Allen?

18 A. Exhibit 6?

19 Q. Exhibit 6.

20 MR. BRODY: I don't think it's in
21 Exhibit 6.

22 MR. POLLOCK: I'm sorry. I
23 apologize. Exhibit 7. Thank you.

24 THE WITNESS: Sir, I have said this
25 repeatedly, so I will repeat it one more time.

1 BY MR. POLLOCK:

2 Q. Go ahead.

3 A. It's the -- where the document makes
4 reference to Legacy's proposal has been reviewed and
5 supported by leadership counsel of both the federal
6 MDL and state --

7 Q. Where are you looking on Exhibit 7,
8 I'm sorry? Where are you looking on Exhibit 7?

9 A. Sir, let me direct you to the second
10 paragraph, last sentence.

11 Q. Okay.

12 A. "Legacy's proposal has been reviewed
13 and is supported by leadership counsel on both --"

14 Q. Got it.

15 A. " -- the federal MDL and in state
16 court cases across the country."

17 And, as I indicated, that's the same
18 language that was utilized in Exhibit 4 to reference
19 Mr. Birchfield.

20 There's no evidence or dispute in the
21 record that he's not referring to Mr. Birchfield.
22 So when you're asking, do I -- is it my position
23 this is referring to Mr. Birchfield; yes, it is,
24 because not only is the language the same, not only
25 does it follow along the heels of the October 18th

1 correspondence the first time introducing
2 Mr. Birchfield as further enhancing the proposal
3 with an amount, it's also consistent with the
4 amounts that Mr. Birchfield was saying at the
5 October 17th Mass Torts Made Perfect seminar.

6 Q. I will move on briefly to Exhibit 3,
7 please.

8 Tell me when you are ready.

9 A. I'm on Exhibit 3, sir. Thank you.

10 Q. So this is a J&J earnings call for
11 the Quarter 3 2023.

12 When these calls take place, do you
13 participate in the entire call?

14 A. There is no set position for these
15 calls for a litigation update. So, depending upon
16 the circumstances and depending upon the questions,
17 perhaps, that we get in advance of an earnings call,
18 I may or may not participate.

19 I believe, because of the July 28th,
20 2023 dismissal, we had received some inquiries. And
21 so, for that reason, we scheduled a time for me to,
22 I think, give a pre-statement and then an oral
23 statement.

24 Q. Do you make every effort at J&J to be
25 accurate in your quarterly calls?

1 A. I do, sir. Thank you.

2 Q. Excellent.

3 If you can go to Plenary Hearing 10,
4 this is a statement from Joseph Wolk, W-O-L-K, at
5 the bottom of the page. Let me know when you're
6 ready.

7 He says, last sentence, Due to higher
8 interest rates earned -- our earnings are -- now
9 expect net interest income in the range of \$300
10 million to \$400 million.

11 A. Yes, sir.

12 Q. Do you see that?

13 A. No, I don't see it.

14 Q. The bottom of the page, "Looking
15 across the P&L. Adjusted pre-tax operating margin
16 is still expected to improve by approximately 50
17 basis points versus prior year, driven by stronger
18 margin profile and business mix. Net other income
19 is also being maintained ranging from \$1.7 billion
20 to \$1.9 billion. Due to higher interest rates
21 earned on cash, we now expect net interest income in
22 the range of \$300 million to \$400 million."

23 Do you see that?

24 A. I see the text that you're referring
25 to.

1 Q. You see it?

2 A. I see it.

3 Q. Is it accurate? Do you believe it's
4 accurate?

5 A. I believe that Mr. Wolk is making an
6 accurate statement. I don't know what context
7 you're trying to put it in, because it's not in any
8 way related to or inconsistent with my prior
9 testimony.

10 Q. Fair enough. If you go to page
11 Plenary Hearing 14, this is Erik Haas, Worldwide
12 Vice President of Litigation at J&J, which is you, I
13 assume.

14 And if we can go to the top of the
15 right-hand side there, on page 14, you talk about a
16 four-prong strategy, I believe it is?

17 A. Yes.

18 Q. And the third -- the second prong is
19 consensual resolution. Consensual resolution you
20 mention again in the second full paragraph in terms
21 of timing on the second prong, the consensual
22 resolution, and then you refer to it again in the
23 third -- the next paragraph, it says, "Third, while
24 those negotiations are proceeding..."

25 Do you see the section, the words I'm

1 referring to, the consensual resolution, consensual
2 resolution, and describing those as negotiations?

3 A. Yes.

4 Q. So isn't it true that one of the
5 things you were attempting to do was to encourage
6 the world to come and negotiate with J&J to try and
7 resolve the claims against it for the talc?

8 A. I don't think I would put it that
9 way. I think what I was doing was, as consistent
10 with what was disclosed and is in the record in the
11 bankruptcy court, we were working on a resolution
12 plan that had the support of the counsel
13 representing the vast majority of the claimants, and
14 we were further refining that plan consistent with
15 Judge Kaplan's recommendation in his July 28th, 2023
16 opinion, where he explicitly urged and recommended
17 us to continue to do so, because we had made, in his
18 words, remarkable success in proceeding to a
19 consensual resolution.

20 And what we were endeavoring to do is
21 to continue down that path through a proposed
22 bankruptcy. And I can get into more detail, if you
23 would like, but what effectively the plan is
24 involving is bringing more [participants] and
25 counsel for claimants voluntarily into the deal, and

1 determining whether and to what extent we should let
2 others pass through that do not want to participate
3 because, in the end, we want a consensual deal. We
4 do not want to go back to a circumstance where we
5 have a situation where we have a lot of objectors.
6 We didn't think we were going get them the last time
7 because the majority had voted in favor of it.

8 But that is the goal. The goal is to
9 obtain finality for both future and current
10 claimants in a fair and equitable resolution, sir.
11 So that's what I was referring to. It flows exactly
12 from what was done in the bankruptcy, what Judge
13 Kaplan recognized in the law-of-the-vote goals that
14 we are seeking to achieve.

15 Q. So you were willing to negotiate
16 within the bankruptcy context only; is that right?

17 A. Sir, that is demonstratively false
18 based upon the record in this case. In the record
19 in the bankruptcy case, there is evidence
20 demonstrating that we were negotiating with
21 Mr. Birchfield as early as fall of 2020, where he
22 was seeking \$3.25 billion for an ovarian-only deal.

23 We negotiated in the spring of 2021,
24 again with Mr. Birchfield, the TCC and Imerys, the
25 FCR. We were told we had a deal done, but -- by the

1 TCC in Imerys for \$2.4 billion. And, in the end,
2 they weren't able to deliver on that.

3 We negotiated in the bankruptcy case
4 for the \$8.9 billion resolution. Again, we were
5 told by the mediators in that deal, that is now a
6 matter of record, that the TCC, including
7 Mr. Birchfield, were in favor of that; and, at the
8 last minute, they backed out.

9 So that is demonstratively untrue.
10 We've negotiated outside of bankruptcy, we've
11 negotiated inside of bankruptcy, we've negotiated
12 settlements where appropriate. We are endeavoring
13 to do the best to get a comprehensive and final
14 resolution that's in the best interest of all
15 claimants so that we can put this matter behind us,
16 so we can stop wasting money on attorneys' fees that
17 could otherwise be spent to saving people's lives.

18 Q. Excellent.

19 With regard to the 3.25 billion, the
20 4.2 billion -- I think those are the right numbers.
21 Is that right, 3.25 and 4.2 billion, you mentioned?

22 A. Yes, sir.

23 Q. Excellent.

24 Do you have a single email to confirm
25 those?

1 A. To confirm?

2 Q. That either number was the number
3 that Mr. Birchfield ever agreed to?

4 A. Yes. They are in the record, in the
5 bankruptcy.

6 Q. So you have emails from Andy
7 Birchfield saying that he agreed to accept 3.25
8 billion or 4.2 billion?

9 A. I examined Mr. Birchfield with
10 respect to those at his deposition, so I --

11 MR. POLLOCK: Your Honor, I want an
12 answer to my question.

13 THE WITNESS: I am trying to answer.

14 MR. POLLOCK: I want an answer to my
15 question.

16 MR. BRODY: Mr. Haas is trying to
17 answer.

18 THE WITNESS: I'm trying to give you
19 an answer.

20 THE COURT: I will let Mr. Haas
21 answer the question. And then, Mr. Pollock, you
22 tell me if that was responsive to your question.

23 THE WITNESS: You're focusing on --

24 BY MR. POLLOCK:

25 Q. Where is this email that --

1 A. You're focusing on email, and what I
2 was trying to explain before you interrupted me,
3 sir, is that if you look at his dep --
4 Mr. Birchfield's deposition, you will see the
5 documentation that supports the very proposition
6 that I stated. It's in the record.

7 So you can look at it and you can
8 decide whether or not this supports or not, but
9 there's documents -- the very agreement, itself, has
10 Mr. Birchfield all over it. It says Mr. Birchfield,
11 and Beasley Allen. It's all in that document. So
12 look at the exhibits. I refer you to the exhibits.
13 Okay?

14 Q. I did read the transcript and I've
15 read the exhibits. If you believed you had a deal,
16 why didn't you move to enforce the next day?

17 A. Which deal are you talking about?

18 Q. If you believed --

19 A. Which deal are you talking about,
20 sir?

21 Q. -- you had a deal for \$4.2 billion
22 with Andy Birchfield -- listen to my question,
23 please, for once.

24 If you had believed you had a deal
25 for \$4.2 billion and that was the deal, I can -- I

1 got this done, why didn't you move to enforce
2 immediately?

3 A. Let me explain exactly what happened
4 to you. Let me explain. The TCC --

5 MR. POLLOCK: Your Honor, this is
6 exactly why I don't want an narrative answer. I
7 want an answer to my question.

8 THE COURT: Mr. Haas, why would you
9 not have gone and enforced the settlement?

10 THE WITNESS: Because he is
11 misconstruing what I said. Okay? So, the -- what I
12 said is, in the bankruptcy -- in the -- in respect
13 to the \$4.2 billion settlement, the torts claimants
14 committee, Steve Baron and the other members of the
15 TCC represented to you us that the deal was done.

16 What subsequently they came back and
17 told us, after they told us the deal was done, they
18 said they couldn't deliver because the FCR wasn't
19 participating.

20 So that is why we never ended up
21 getting a final signed document, which you need to
22 enforce. What we had was a representation the deal
23 was done. And the same thing with the 8.9 billion.
24 We had the representation that the deal was done on
25 a Sunday night, and then, on a Thursday we received

1 the statement that it had been retracted.

2 So if I had an enforceable deal, yes,
3 sir, of course I would enforce it.

4 BY MR. POLLOCK:

5 Q. But you did not enforce it, correct?

6 A. But if they had --

7 Q. You did not enforce it.

8 A. Sir, please don't -- please don't
9 interrupt me. If I had --

10 Q. I -- no. I'm -- to be honest with
11 you, there's a process here. The process is that
12 not you get -- this is not the Erik Haas show. You
13 get to answer questions when I ask them. Your
14 counsel can object. But the fact is, it is not a
15 time -- this is not the time for you, Erik Haas, to
16 deliberate on the law. And frankly, you can answer
17 the --

18 MR. BRODY: Your Honor.

19 THE COURT: Mr. Haas has provided an
20 answer to your question. And so your second
21 question was with regard to, So you didn't proceed
22 with a motion to enforce?

23 MR. POLLOCK: Correct.

24 MR. BRODY: Your Honor, Mr. Haas was
25 answering the question, and I would ask that if

1 Mr. Pollock has an objection, he direct the
2 objection to the Court so the Court can rule on it,
3 and not tell Mr. Haas what he can or cannot say.
4 Mr. Haas is trying to answer his questions.

5 You know, I've let this line of
6 questioning go, but it's --

7 THE COURT: I think everybody knows
8 what the order is. We've given some latitude here
9 because I want to move things along, but Mr. --

10 Mr. Pollock, your question was to
11 Mr. Haas, is: So you didn't move to enforce the
12 settlement?

13 MR. POLLOCK: Correct. That was all
14 I asked.

15 THE COURT: And I think that the
16 answer was, yes, he did not move to --

17 MR. POLLOCK: Excellent. I'm
18 prepared to move on, sir.

19 THE COURT: Mr. Haas, I'm not --

20 THE WITNESS: Thank you.

21 THE COURT: I'm not taking anybody's
22 position or substituting myself. I'm just trying to
23 move things along as to what the Court's hearing.

24 MR. POLLOCK: Understood. And I
25 appreciate it, Your Honor.

1 Your Honor, I have no further
2 questions at this time.

3 THE COURT: Thank you.

4 Any redirect? Oh, wait.

5 Judge Singh, do you have any
6 questions for Mr. Haas?

7 JUDGE SINGH: I don't have any
8 questions for Mr. Haas.

9 MR. BRODY: I do have some redirect,
10 Your Honor, and I will try to be -- I will try to be
11 brief and I want to try to focus us back on the
12 issues that we believe are important to the
13 disqualification question before the Court.

14 REDIRECT EXAMINATION

15 BY MR. BRODY:

16 Q. And the first thing I want to ask
17 you, Mr. Haas: Your testimony about the kinds of
18 issues and privileged and confidential
19 communications that Mr. Conlan was privy to, exposed
20 to, a part of while he was outside counsel for
21 Johnson & Johnson, is that based on your personal
22 knowledge?

23 A. Yes, sir.

24 Q. And how did you acquire that personal
25 knowledge?

1 A. Through group calls, through
2 individual calls from Mr. Conlan, through individual
3 emails from Mr. Conlan, going out to dinner, going
4 out to lunch with Mr. Conlan, group calls where we
5 had deliberations among the entire outside counsel
6 group.

7 So it was one interaction after the
8 other for the entire time that he was retained by
9 Johnson & Johnson. He was an integral part of our
10 outside counsel group that worked with our internal
11 counsel group to develop and implement the
12 strategies for both the litigation, adjudication and
13 a resolution of the talc claims.

14 Q. And you talked about the outside
15 counsel team. But did you have one-on-one direct
16 communications with Mr. Conlan about privileged and
17 confidential strategic considerations related to the
18 litigation pending here and in the MDL?

19 A. I had many one-on-one conversations
20 with him, and, in addition, he prepared memorandum
21 that he directed solely to me to provide his
22 commentary on other counsels' positions, not just
23 with respect to structural optimization, but all
24 aspects of the litigation, to express his particular
25 views and takes on those issues.

1 MR. POLLOCK: Your Honor, I move to
2 strike on the best evidence rule again. I mean,
3 I've asked for any other document that is not here.
4 He is testifying now directly about memoranda. This
5 is the first time I've heard about it, even though I
6 asked on direct and on cross -- in direct and cross.
7 This is the first I'm hearing of memoranda.

8 I move to strike under the best
9 evidence rule. It's not here.

10 THE COURT: Well, with regard to the
11 testimony, I think under our scenario here --

12 MR. POLLOCK: Yes, sir.

13 THE COURT: -- I can -- I can have
14 that and consider that as part of the weight of the
15 evidence. There's no evidence here --

16 MR. POLLOCK: Yes, Your Honor.

17 THE COURT: -- with regard to the
18 testimony.

19 MR. POLLOCK: Agreed.

20 BY MR. BRODY:

21 Q. Mr. Haas, let me just -- let me just
22 ask you. So these, you know, memos that were
23 prepared by Mr. Conlan for you, and for you and the
24 inhouse J&J team alone, did you then have
25 discussions with Mr. Conlan -- and again, because of

1 the privilege concerns, without getting into the
2 substance -- did you have discussions with
3 Mr. Conlan about the strategies that were discussed
4 in those memoranda?

5 A. I did. I had many discussions with
6 him about them. I, at the time, paid great heed to
7 his views. They influenced our strategic thinking
8 vis-a-vis the other counsel, vis-a-vis what we were
9 doing in the case, vis-a-vis our -- the amounts, the
10 timing, how we would go about approaching our
11 counterparties, in which form, in which structure.
12 So, yes, they did.

13 Q. Did you also have one-on-one
14 discussions with Mr. Conlan about resolutions that
15 the company was seeking to negotiate through the
16 Imerys bankruptcy?

17 A. Yes, sir.

18 Q. Why were you having those one-on-one
19 conversations with Mr. Conlan?

20 A. Because, as I indicated on my direct,
21 consistent with what is in the record about his own
22 view of his expertise, Mr. Conlan held himself out
23 as a preeminent expert in bankruptcy law and the
24 resolution of mass torts liability.

25 Q. During the Imerys bankruptcy, was

1 Mr. Conlan negotiating on J&J's behalf directly with
2 counsel for the TCC?

3 A. Yes, he was.

4 Q. Was he directing -- was he
5 negotiating, excuse me, on J&J's behalf directly
6 with the future claimants representative?

7 A. The future claimants representative
8 counsel, yes.

9 MR. POLLOCK: Just for clarification,
10 is that Imerys or LTL?

11 MR. BRODY: The question was about --

12 THE COURT: Imerys.

13 MR. POLLOCK: Imerys. Okay. Thank
14 you.

15 BY MR. BRODY:

16 Q. And did you have discussion with him
17 during that time period about J&J's negotiating
18 strategy?

19 A. Yes, I did. And by the way, to the
20 question, he also had the same discussions and
21 conveyed the same issues with respect to the LTL
22 FCR.

23 Q. Okay. That's the FCR in the LTL
24 bankruptcy?

25 A. Yes. Future claims representative.

1 Q. Were those discussions about -- and
2 again, without revealing any of the substance of
3 J&J's negotiating strategy -- but were those
4 discussions about Johnson & Johnson's negotiating
5 strategy, in your view, germane to the issues that
6 Johnson & Johnson was attempting to negotiate in the
7 LTL bankruptcy in the summer of 2023?

8 A. Yes. And just, again, those issues
9 were germane to the entire time frame, from 2020,
10 when I started, to today.

11 Again, when we were in bankruptcy,
12 because of the automatic stay, everything else was
13 frozen, and much of the time in the automatic -- and
14 when we were in bankruptcy, we were fighting the
15 motion to dismiss twice. And the first time we
16 prevailed, the second time it was dismissed.

17 And, as a consequence, there has been
18 little progression forward with respect to those
19 issues. So we're effectively still struggling and
20 dealing with how to come up with a comprehensive and
21 final resolution for the talc claims.

22 So the same issues were applicable
23 then as now, and the conversations we had shed light
24 on our thinking with respect to strategically what,
25 when, why, how we would engage in that process.

1 Q. And I take it those are not the kinds
2 of strategic discussions and considerations you
3 would ever share with your opposing counsel?

4 A. Absolutely not, for the reasons I've
5 stated previously. It fundamentally undermines the
6 adversarial process.

7 Q. If you could turn to Exhibit 4 in the
8 binder, Mr. Haas.

9 A. Yes, I'm there.

10 Q. There was a suggestion that somehow
11 there's not a proposal associated with this email of
12 October 18th. If you could turn to the second page
13 of that document.

14 Do you see there's a -- the October
15 18th email is replying to an email of September 28th
16 from Douglas Dachille. Do you see that?

17 A. I do.

18 Q. And does the September 28th email
19 from Douglas Dachille set out the proposal?

20 A. Yes. Well, it summarizes the
21 proposal that, in fact, was discussed, as I've
22 testified, in the September 11th meeting.

23 So we had the September 11th meeting.
24 And then you can look down this series of, kind of,
25 that email chain to bring it back to August 21st,

1 when it was first solicited.

2 So, Douglas Dachille reached out
3 through a contact to our treasurer. Our treasurer
4 responded, copied us. We set up the September 11th
5 meeting where the proposal was presented. Doug
6 Dachille responds on September 28th with respect to
7 that proposal.

8 Then, on the 18th, Mr. Conlan
9 purports to say that he's, for the first time, he's
10 enhancing that proposal with input from
11 Mr. Birchfield, but it's the same proposal. That's
12 why when I was responding to Mr. Pollock's questions
13 I was referring to the first sentence that said
14 proposal. It's all the same proposal.

15 Q. But, as you've explained, I take it
16 the only thing that was new, or the things that were
17 new, in the October 18th email were the mention of a
18 settlement matrix and the explanation that had
19 already been shared with Mr. Birchfield, and he
20 supported it, and Mr. Birchfield was ready to come
21 in with Mr. Conlan to talk about the matrix?

22 A. That's correct.

23 Q. All right. You were asked some
24 questions about whether Mr. Conlan is now a
25 businessman and no longer a lawyer, and you were

1 also asked some questions about Rule 1.9 of the
2 Rules of Professional Conduct.

3 Rule 1.9(c) provides that a lawyer
4 who has formerly represented a client in a matter
5 shall not thereafter use information relating to the
6 representation to the disadvantage of the former
7 client, or reveal information relating to the
8 representation.

9 Since you were asked, in your view,
10 has Mr. Conlan violated that?

11 A. Yes. And I believe I did testify to
12 that in response to Mr. Pollock's questioning,
13 because, as a lawyer, your responsibilities do not
14 end when that representation ends. You have a
15 continuing, ongoing obligation. That is an explicit
16 provision of the rule.

17 Q. To put it differently, once you have
18 represented a client in a matter, even if you leave
19 the practice of law, you can't switch sides; right?

20 A. Well, and in the way -- in the way --
21 in the vernacular that I used, once you have the
22 client, you always have the a client, because that
23 entity - in this case, Johnson & Johnson - was and
24 is Mr. Conlan's client with respect to his duties
25 and his ethical obligations.

1 Q. You were also asked a number of
2 questions about, Well, is this notebook -- are these
3 all the communications between Mr. Conlan and
4 Mr. Birchfield. Do you recall those questions?

5 A. Yes.

6 Q. Did -- when was it that you first
7 came to learn of the existence of extensive written
8 communications directly between Mr. Conlan and
9 Mr. Birchfield beginning in April of last year?

10 A. As I testified, it was a couple of
11 weeks ago, when I first saw what Mr. Birchfield and
12 the PSC had submitted in connection -- into the
13 federal court in the MDL with the privilege log,
14 where they disclosed myriad communication after
15 communication by, between, and with Mr. Conlan,
16 Beasley Allen, and specifically with Mr. Birchfield,
17 prior to ever asking us for our consent, requesting
18 a waiver, or even disclosing the existence of those
19 communications.

20 Q. To this day, have they asked you for
21 a waiver?

22 A. Never.

23 Q. Did Mr. Birchfield ever reach out to
24 you to say that he had been approached by
25 Mr. Conlan?

1 A. Never.

2 Q. Anyone from Beasley Allen?

3 A. Never.

4 Q. Anyone from the PSC?

5 A. Never.

6 Q. In your position as the worldwide
7 head of litigation for Johnson & Johnson, to your
8 knowledge, did they approach anyone on the inhouse
9 or the outside counsel team to disclose that before
10 you got the email from Mr. Conlan on October 18th?

11 A. No, they didn't. There's only one
12 person in Johnson & Johnson authorized to give the
13 waivers. That's me.

14 Q. And more broadly, did they ever -- to
15 your knowledge, as worldwide head of litigation, did
16 anyone even disclose prior to that date that
17 Mr. Conlan was working with Mr. Birchfield and other
18 members of the Beasley Allen firm?

19 A. No.

20 Q. Have you, Mr. Haas, had an
21 opportunity to review an decision by the Special
22 Master, Judge Schneider, in the MDL --

23 A. Yes, I did.

24 Q. -- last week?

25 A. Yeah.

1 MR. POLLOCK: Objection, Your Honor;
2 beyond the scope, outside the record. This is
3 direct examination.

4 THE COURT: What's the -- I'm
5 sustaining that. That is outside the record,
6 outside cross-examination.

7 MR. BRODY: Your Honor, it's going to
8 go directly to -- well, let me -- let me --

9 THE COURT: What's the problem?

10 MR. BRODY: I'll put it within the
11 scope directly --

12 THE COURT: Okay.

13 MR. BRODY: -- with a couple of
14 questions, Your Honor.

15 BY MR. BRODY:

16 Q. Mr. Haas, do you recall being asked
17 questions about whether you had any evidence that
18 Mr. Birchfield and Mr. Conlan had formed an
19 alliance?

20 A. Yes.

21 Q. All right.

22 MR. BRODY: If I may approach, Your
23 Honor?

24 THE COURT: With what?

25 MR. BRODY: With a copy of the order.

1 THE COURT: Could you share it with
2 Mr. Pollock.

3 MR. BRODY: Yes.

4 MR. POLLOCK: I object to this entire
5 thing on -- if you look at Exhibit 16, which is
6 Andy's certification of January 29, paragraph 23.
7 He addresses directly that he had communications
8 with Mr. Conlan. He isn't hiding it. And Mr. Haas
9 is saying, Oh, I just learned about it two weeks
10 ago. That's not true. The fact is they knew about
11 this as of January of '23 -- January 29.

12 Now, suddenly, we're going to try and
13 expand the record. I have no opportunity, unless
14 I'm going to start cross-examining the Special
15 Master, who is here in the room, I'm going to start
16 questioning everybody on the documents. I have no
17 clue where this came from, what the validity of it
18 is, or why it's relevant here today.

19 And Mr. Brody gave his word to Judge
20 Singh and to you, the record is closed, we're done.
21 So I vehemently object to now suddenly opening the
22 record up, because what's going to be the end point.

23 THE COURT: Well, I did sustain your
24 objection, Mr. Pollock.

25 MR. POLLOCK: Yes, sir.

1 THE COURT: And I did offer Mr. Brody
2 an opportunity to proffer what that's for.

3 MR. POLLOCK: Understood, Your Honor.

4 THE COURT: And that's the Special
5 Master's decision.

6 MR. POLLOCK: Judge, this is your
7 courtroom, Your Honors' courtroom. I'm trying to
8 figure out the linguistics to that word. Whatever
9 you decide is fine with me, but I have a to state
10 the objection.

11 THE COURT: Very well.

12 BY MR. BRODY:

13 Q. So, since it was mentioned, Mr. Haas,
14 if you would --

15 THE COURT: Well, what's the proffer,
16 Mr. Brody, with regard to the Special Master's --

17 MR. BRODY: Well, if I may approach
18 first so that he has a copy.

19 THE COURT: Well, let me hear what
20 your proffer is first.

21 MR. BRODY: Sure. That the Special
22 Master's decision describing the substance of those
23 documents after his in camera review supports the
24 existence of an alliance between the two, and it
25 goes directly to the point that Mr. Pollock was

1 trying to make on cross-examination that there is no
2 evidence that Mr. Haas has seen of an alliance
3 between the two. It goes directly to that.

4 THE COURT: How does that, then,
5 differ from what Mr. Birchfield was saying, that I
6 had communications with Mr. Conlan?

7 MR. BRODY: Because the only thing
8 Mr. Birchfield said in his declaration was: To the
9 best of my knowledge, I met Mr. Conlan for the first
10 time on May 2nd, 2023.

11 There is no additional information,
12 no disclosure as to the extent of the conversations,
13 the fact that there are emails going back and forth
14 for a period of months; that, according to the
15 privilege log, they are exchanging claim matrices,
16 estimates of ovarian cancer case values, and
17 claiming that those communications between
18 Mr. Birchfield and Ms. O'Dell and Mr. Conlan are
19 privileged, so that J&J can't see them.

20 MR. POLLOCK: Your Honor.

21 MR. BRODY: So an extraneous
22 statement in a declaration that says, "I met
23 Mr. Conlan for the first time on May 2nd, 2023,"
24 doesn't -- doesn't tell us anything about what was
25 going on.

1 And to the extent we know or have an
2 inkling of what was going on and what's in the
3 documents that they have said are privileged,
4 they're privileged communications with Johnson &
5 Johnson's former opposing counsel, we do have --

6 THE COURT: Well, we did find that's
7 part of the record. That's part of the federal
8 record, that's part here. I can take judicial
9 notice of that, of the existence.

10 MR. BRODY: And, Your Honor, you can
11 also take judicial notice of the Special Master
12 Order No. 21 in the MDL.

13 THE COURT: But my concern is, and
14 I'm not going any further than to say why -- you
15 know, why wasn't that brought up in direct, why
16 wasn't it addressed earlier, because we are getting
17 somewhat out of the scope where we are today, where
18 I anticipated being today.

19 MR. BRODY: Well, I think it's
20 directly within the scope of the questions about,
21 you know --

22 THE COURT: What exactly does
23 Mr. Haas have --

24 MR. BRODY: What do you -- what do
25 you have; look at the notebook.

1 THE COURT: That's not lost on us.

2 MR. POLLOCK: Your Honor, this is all
3 privileged mediation-protected communications. So
4 if we're going to throw aside the mediation
5 privilege, which I thought was pretty stark in New
6 Jersey, we are cutting new ground. And to me, with
7 all due respect to Judge Schneider, who is sitting
8 behind me, and he has his own opinions, he's
9 entitled to his own views, but frankly, unless he
10 made an express finding that Andy Birchfield
11 conspired, which I don't think he did, with
12 Mr. Conlan, these are all protected communications,
13 and now we're going to crack open the privilege.
14 They have asserted the privilege multiple times.

15 THE COURT: We are not cracking open
16 anything, other than we have the privilege log and
17 we have a document, a decision by the Special
18 Master.

19 MR. POLLOCK: So where -- but where
20 does this go? Once we take this --

21 THE COURT: We're not going to -- I'm
22 going to permit the questioning.

23 MR. POLLOCK: Fair enough.

24 THE COURT: I'm going to permit you
25 to reopen some aspect of your direct with regard to

1 this decision, but we're not breaching, addressing,
2 conflicting, or doing anything with regard to the
3 mediation privilege.

4 MR. BRODY: Absolutely, Your Honor,
5 and I'm not suggesting --

6 THE COURT: That is sacrosanct here.
7 There's a myriad reasons why that exists.

8 MR. BRODY: And I'm not suggesting
9 that we should do that, and I'm not going in that
10 direction, so.

11 BY MR. BRODY:

12 Q. Mr. Haas, I'll just ask -- I'll just
13 ask you. You've read the Special Master's decision;
14 is that right?

15 A. Yes, I have.

16 Q. And you have read his conclusions
17 based on his in camera review of the documents,
18 correct?

19 A. Yes.

20 Q. And so you understand that he
21 indicated that subjects covered in the privileged
22 documents include close collaboration and strategy
23 communications regarding how to consider, conduct,
24 participate in, initiate, and/or continue to mediate
25 with J&J regarding plaintiffs' proposal, right?

1 A. Yes.

2 Q. Referring to close collaboration and
3 strategy communications between Conlan and Legacy on
4 the one hand and Beasley Allen on the other, right?

5 A. That's correct.

6 Q. He indicated that subjects covered in
7 the documents include regular communications with
8 Birchfield and other counsel for plaintiffs
9 regarding the foregoing matters, including when and
10 how to present the settlement proposal to J&J in the
11 context of mediation.

12 Are you familiar with that finding?

13 A. Yes, I'm familiar with the finding.

14 Q. And my question to you in response to
15 the questions that you got on cross-examination is:
16 Does that suggest to you that they had formed an
17 alliance, or to use the words from the order, were
18 collaborating?

19 MR. POLLOCK: Your Honor, I object
20 to --

21 THE WITNESS: When he --
22 [indiscernible overtalking].

23 MR. POLLOCK: Let me object, please.

24 I object because when it says -- the
25 question is, "Does it suggest to you," with due

1 respect to the Court, I don't care what it suggests
2 to Mr. Haas. What I care about are the facts. Is
3 there a fact that there was a confidential
4 disclosure in this case?

5 And to me -- he's allowed his own
6 opinions. I've got my opinions. I don't think the
7 Court really should care about either. I want to
8 know what the facts are. And I do think we should
9 be limited to what the facts are, because that's
10 what [Trupo] says: What are the facts?

11 THE COURT: Well, ultimately, that
12 question is to be resolved by the Court.

13 MR. POLLOCK: Correct.

14 MR. BRODY: So let me -- let me --
15 Your Honor, I can rephrase the question and
16 directly --

17 THE COURT: I'll sustain the
18 objection.

19 MR. BRODY: -- directly in the
20 context of what Mr. Haas was asked by Mr. Pollock.

21 BY MR. BRODY:

22 Q. Do you consider this --

23 THE COURT: Mr. Haas.

24 MR. BRODY: Mr. Haas.

25 THE COURT: You said Mr. Pollock.

1 MR. BRODY: Yeah, no. I -- my point
2 was I -- I'm going to rephrase the question within
3 the context of what Mr. Pollock asked --

4 THE COURT: Sure.

5 MR. BRODY: -- of Mr. Haas.

6 THE COURT: Okay.

7 MR. BRODY: My apologies if I -- if
8 I'm mixing names.

9 THE COURT: That's okay.

10 MR. BRODY: But...

11 THE COURT: I just wanted to make
12 sure of who you were speaking about.

13 MR. BRODY: Yeah, no, and I'm going
14 to put the question in the context of the questions
15 that Mr. Pollock asked Mr. Haas.

16 BY MR. BRODY:

17 Q. Mr. Haas, if this close collaboration
18 and these communications weren't disclosed to you at
19 the time they were being made between your former
20 counsel and Mr. Birchfield's firm, to put it in the
21 context of the words used by Mr. Pollock, evidence
22 of an alliance between your former counsel and the
23 Beasley Allen firm?

24 A. They are. And to put it in context
25 of when the entire line of questioning was

1 presented, they do show evidence of alliance; it was
2 not disclosed; it was concealed; and it's a type of
3 collaboration that fundamentally undermines the
4 adversarial process by communicating with
5 Mr. Birchfield on and having that alliance on the
6 very issues that are at the heart of the matters
7 that we were adjudicating and seeking to resolve and
8 the very issues that were being debated, critiqued,
9 discussed by and between us and outside counsel,
10 that presents an unfair advantage to our adversaries
11 and thwarts our ability, and is thwarting today, our
12 ability to get a final, effective, and equitable
13 resolution of this case for all claimants, as well
14 for J&J.

15 MR. BRODY: Thank you, Mr. Haas.
16 Those are my redirect questions.

17 THE COURT: Thank you.

18 Any questions, Judge Singh?

19 JUDGE SINGH: No.

20 THE COURT: Thank you.

21 I don't have any questions.

22 Mr. Pollock?

23 MR. POLLOCK: No, Your Honor. Thank
24 you very much. And I appreciate your patience,
25 Mr. Haas, and I thank you.

1 THE WITNESS: Thank you, sir.

2 THE COURT: Thank you, Mr. Haas. You
3 may step down.

4 Mr. Brody, your next witness.

5 MR. BRODY: I call James Murdica,
6 Your Honor.

7 THE COURT: Mr. Murdica, before
8 you're seated, please raise your right hand, tell me
9 your name, and please spell your last name.

10 THE WITNESS: James Murdica,
11 M-U-R-D-I-C-A.

12 JAMES MURDICA, having been duly
13 sworn, was examined and testified as follows:

14 - - -

15 DIRECT EXAMINATION

16 - - -

17 BY MR. BRODY:

18 Q. So, Mr. Murdica, Judge Porto, Judge
19 Singh, I know we covered a lot of ground in
20 Mr. Haas' examination, and I'm going to try to avoid
21 repeating anything that you you've already heard.

22 Mr. Murdica, what is your current
23 occupation?

24 A. I'm an attorney.

25 Q. And where do you work?

1 A. I work at Barnes & Thornburg.

2 Q. Okay. And how long have you been
3 there?

4 A. I've been there seven years.

5 Q. And in the time that you have working
6 at Barnes & Thornburg, have you represented Johnson
7 & Johnson?

8 A. The entire time.

9 Q. As outside counsel?

10 A. As outside counsel, correct.

11 Q. Do you represent Johnson & Johnson in
12 the talc litigation?

13 A. I do.

14 Q. And does your representation of J&J
15 include advising the company with respect to claims
16 that are pending in this state court MCL proceeding?

17 A. It does. My role in talc is
18 primarily as resolution counsel, advising on that.
19 And during the pendency of the LTL bankruptcies, I
20 was the lead outside counsel responsible for the
21 mediations.

22 Q. Okay. And does your representation
23 of J&J also, just so the record is complete, include
24 advising the company as to the cases that are
25 pending in the federal MDL?

1 A. Very much so.

2 Q. Who do you correspond with at Johnson
3 & Johnson as part of your work on the talc
4 litigation?

5 A. I report to Andrew White and to
6 Erik Haas.

7 Q. All right. I'm going to be asking
8 you some questions about the work you have done on
9 the talc litigation and the work that Mr. Conlan did
10 as counsel for J&J on the talc litigation. I'm
11 going to give you the same cautions that I gave to
12 Mr. Haas. I don't want you to go into the substance
13 of any of the privileged and confidential
14 communications that you have had with the company.
15 So I want to keep things on a high, yes or no level,
16 when we are getting into substantive issues, because
17 those conversations are privileged.

18 Do you understand that?

19 A. I understand.

20 Q. All right.

21 Through your representation of
22 Johnson & Johnson in the talc litigation, did you
23 work with Mr. Conlan while he was representing the
24 company?

25 A. I did.

1 Q. Did you work with him directly?

2 A. I worked with him directly, yes.

3 Q. Can you explain at a general level
4 what issues you worked on with Mr. Conlan?

5 A. Yes. Early in 2020 --

6 MR. POLLOCK: Judge, can I just get a
7 clarification here, sir, Your Honor, whether it was
8 on Imerys or LTL, because we're apparently going to
9 cover a long time period.

10 MR. BRODY: Your Honor, it was a --

11 THE COURT: Sure.

12 MR. BRODY: It was a general question
13 as to what types of issues. We'll get into
14 specifics, but it was not limited to one thing or
15 another.

16 THE COURT: It involved Imerys and
17 LTL?

18 THE WITNESS: Ultimately, yes, Your
19 Honor. I was going to start with when I began in
20 this role with talc in 2020.

21 THE COURT: As resolution counsel?

22 THE WITNESS: Yes, Your Honor.

23 THE COURT: Okay.

24 Mr. Brody.

25 BY MR. BRODY:

1 Q. You can proceed to answer the
2 question.

3 A. I was asked to take this role on by
4 Johnson & Johnson in early 2020, by Mr. Haas'
5 predecessor, Mr. Braunruether, who he testified
6 about.

7 From that time on, I was very
8 involved daily in talc resolution, having
9 conversations with plaintiffs -- various plaintiffs'
10 counsel.

11 Sometime in the summer of 2020,
12 Mr. Conlan was hired by Mr. Braunruether.
13 Mr. Braunruether asked me to work closely with
14 Mr. Conlan on resolution.

15 From that point on, Mr. Conlan and I
16 worked very closely, to the point that we were
17 speaking almost every day in the late summer and
18 fall of 2020. Email, phone calls, everything I did
19 with respect to resolution I either incorporated
20 Mr. Conlan or ran by Mr. Conlan.

21 Q. So you communicated by phone, I take
22 it?

23 A. Every day.

24 Q. Over email?

25 A. Yes.

1 Q. In person?

2 A. When possible, yes. It was -- we had
3 COVID at that point in time.

4 Q. And I think you indicated that you
5 frequently would communicate daily with Mr. Conlan?

6 A. That's correct.

7 Q. Were you involved in communications
8 involving Mr. Conlan and other members of the J&J
9 team?

10 A. I was. As Mr. Haas described, we had
11 weekly calls throughout the course of that year, and
12 throughout the time Mr. Conlan became involved. And
13 the weekly call would include the Weil -- the head
14 of Weil, because they were handling the Imerys
15 aspect; eventually, somebody from Jones Day, because
16 they were handling the other bankruptcy aspect that
17 became LTL; somebody from King & Spalding, because
18 they were national counsel for the mesothelioma
19 claims; somebody from Shook Hardy, because they were
20 national counsel for the ovarian claims; myself and
21 Mr. Conlan.

22 And internally, at that point in
23 time, they would include Joe Braunruether, the
24 deputy general counsel of J&J; John Kim, who had
25 Mr. White's role at the time; and sometimes

1 Mr. White, usually Mr. White.

2 Beyond that, that was just the
3 standing weekly call, Mr. Conlan, myself, and
4 Mr. Braunruether, and usually Mr. Kim had regular
5 separate calls to coordinate the high-level strategy
6 and resolution, because Mr. Conlan and I were the
7 ones that were in charge of the overall strategy and
8 what we were doing, really, with the resolution and
9 trying to get a resolution, originally with
10 Mr. Birchfield, outside of the Imerys bankruptcy,
11 and then utilizing the Imerys bankruptcy, and so on.

12 Q. Can you -- so you mentioned the
13 Imerys bankruptcy. With respect to your
14 communications with Mr. Conlan, how was Mr. Conlan
15 involved in the Imerys bankruptcy?

16 A. So, like I said, with regard to
17 resolution, Mr. Conlan is a bankruptcy expert, but
18 also a mass tort resolution expert. And so
19 Mr. Conlan and I worked hand-in-hand throughout the
20 time. He knew all the bankruptcy; I didn't.

21 He also had connections to the FCR,
22 the future claims representative, and the future
23 claims representative's counsel, and I didn't. And
24 he knew all the bankruptcy lawyers representing the
25 debtor and the torts claimants committee in Imerys

1 because he worked with them for a long time. In
2 fact, the debtor's counsel, I believe, was one of
3 his mentees, I think he told me, while he was at the
4 Sidley firm.

5 Q. All right. As part of his work, was
6 Mr. Conlan involved in the legal team's evaluation,
7 confidential and privileged evaluation of potential
8 resolutions of J&J's talc litigation through the
9 Imerys bankruptcy?

10 A. He was, both through the Imerys
11 bankruptcy and before that, when we were negotiating
12 with Mr. Birchfield for an initial resolution. Mr.
13 Conlan -- I would forward Mr. Conlan or incorporate
14 him in everything I was doing.

15 So, for example, even before we
16 considered utilizing the Imerys bankruptcy, he was
17 seeing draft proposals with Mr. Birchfield and
18 helping me with them and commenting on them, et
19 cetera.

20 MR. POLLOCK: Your Honor, I've got to
21 raise the same objection I raised with Mr. Haas
22 regarding documents, communications, records and
23 things. I understand that -- you understand my
24 concern. I don't want to interrupt the flow, but
25 obviously you understand I have a continuing

1 objection under the best evidence rule, under the
2 fact this is rank hearsay, it doesn't fall within
3 1006, it doesn't fall within 701.

4 So, I object to it, but I don't want
5 to keep on interrupting, but I don't my silence to
6 be acquiescence.

7 THE COURT: You have to make your
8 record, and my prior ruling with regard to
9 documents/no documents continues.

10 MR. POLLOCK: Yes, sir. And I -- I'm
11 going to sit down and shut up as long as I can, only
12 because I don't want to interrupt the flow. But
13 please understand I have an ongoing objection. Is
14 that fair?

15 THE COURT: That's fair.

16 MR. POLLOCK: Thank you, sir.

17 THE COURT: You're welcome.

18 BY MR. BRODY:

19 Q. So let me -- let me ask you this
20 question. Was Mr. Conlan involved in evaluation of
21 terms, resolution terms specifically proposed by
22 Beasley Allen?

23 A. He was.

24 Q. What was Beasley Allen's role in the
25 Imerys bankruptcy?

1 A. Beasley Allen represented one of the
2 claimants on the tort claimants committee in the
3 Imerys bankruptcy.

4 Q. Okay. Were members of the Beasley
5 Allen firm part of the TCC negotiating committee in
6 the Imerys bankruptcy?

7 A. They were. They, to my
8 understanding, as was represented to me, the TCC in
9 the Imerys bankruptcy appointed a negotiation
10 committee, and Leigh O'Dell and Ted Meadows were two
11 of the representatives on the negotiating committee
12 that we worked with the most.

13 Q. And was that at the time when
14 Mr. Conlan was counsel for J&J?

15 A. Yes, it was.

16 Q. All right. Did you tell anyone at
17 Beasley Allen during the Imerys bankruptcy that
18 Mr. Conlan was working as counsel for J&J on the
19 talc litigation?

20 A. Yes. They knew that from me telling
21 them, but also from seeing Mr. Conlan on phone calls
22 and Zooms and the like.

23 Q. All right. Who did you tell that
24 Mr. Conlan was working as counsel for J&J on the
25 talc litigation?

1 A. I certainly would have told Andy, and
2 Leigh and Ted I know would have at least seen him on
3 the Zooms as we were negotiating a deal we almost --
4 you know, we came very close on in February of 2021.

5 Q. All right. When, to the best of your
6 recollection, did you first inform -- you referred
7 to Andy. I assume you're referring to
8 Mr. Birchfield?

9 A. Yes, Mr. Birchfield.

10 Q. When did you first tell
11 Mr. Birchfield that Mr. Conlan was representing J&J
12 on the talc litigation?

13 A. I don't remember exactly, but it
14 would have been sometime in the fall of 2020.

15 Q. Okay. He had submitted a
16 certification in this case that says it was in 2020.
17 Is that consistent with your recollection?

18 A. Yes.

19 Q. All right. Were you negotiating with
20 Mr. Birchfield, negotiating resolutions with
21 Mr. Birchfield at that time?

22 A. Yes. We started -- Mr. Birchfield
23 and I started negotiating a resolution, I believe in
24 April 2020, and there were iterations from April
25 2020 right through, you know, 2022, 2023.

1 Q. And when you refer to "iterations,"
2 you're talking to iterations of resolution
3 proposals?

4 A. Yes. There were several beginning in
5 2020.

6 Q. And throughout the course of those,
7 you know, various iterations -- after Mr. Conlan
8 came on board as a member of J&J's outside counsel
9 team, was he involved in internal privileged and
10 confidential discussions of how the company would
11 respond to and negotiate those different iterations?

12 A. Yes. As I said before, Mr. Conlan
13 and I were the main people running the strategy and
14 evaluating the settlement options, and we were the
15 only ones having the highest level conversations
16 with the deputy general counsel.

17 Q. And did that include, without
18 revealing any of the substance, discussion of the
19 specific terms that had been proposed by Beasley
20 Allen?

21 A. Absolutely.

22 Q. And again -- well, let me ask you
23 this: Did any of the proposals from Beasley Allen
24 that you were discussing in that privileged and
25 confidential context include things like settlement

1 matrices?

2 A. They did.

3 Q. And did you and Mr. Conlan engage in
4 analysis of the values in those matrices, the
5 structure of those matrices, claims procedures,
6 things like that associated with them?

7 A. We did, as did other parts of the
8 team, and we ultimately had questions for our
9 experts on them to get to weigh in on that. Yes, we
10 did.

11 Q. And when you refer to experts, are
12 you referring to consultants who were retained
13 confidentially to provide confidential
14 communications about things like claim values?

15 A. That's correct.

16 Q. About things like the potential
17 number of future claimants?

18 A. That's another thing they were
19 retained for, yes.

20 Q. Okay. Did you, in that period,
21 consider with Mr. Conlan proposals from Beasley
22 Allen regarding the potential number and value of
23 future claims?

24 A. We did, yes.

25 Q. And was Mr. Conlan privy to

1 confidential work performed by J&J's litigation
2 consultants related to that?

3 A. He was. Mr. Conlan was my closest
4 confidante on all of this, from the first written
5 Beasley Allen proposal, which I -- which he had, and
6 we discussed and went back and forth with with
7 Mr. Birchfield and his firm, and that process
8 continued over months.

9 Q. And through that process, did
10 Mr. Conlan learn how J&J assessed the strengths and
11 weaknesses of the Beasley Allen proposals?

12 A. He did. He learned that, he learned
13 the way J&J thinks about talc claims, how they value
14 them. He learned, perhaps more importantly, the way
15 I work, because I still am in charge of resolution
16 for talc. He learned every strategy I had about who
17 to go to, who not to go to. All the different
18 strategic options we should consider, everything I
19 learned over my 15 years of being J&J's main outside
20 resolution counsel. He was literally somebody I had
21 talked to every day about this.

22 Q. I think you indicated you regularly
23 shared with him communications that you received
24 from Beasley Allen?

25 A. Yes, I forwarded them immediately.

1 Q. Did you and Mr. Conlan discuss them?

2 A. Yes.

3 Q. Did you include in those discussions
4 how to respond to them?

5 A. Yes. And many times I needed his
6 advice because there were bankruptcy questions in
7 addition to all the settlement questions, as well,
8 so I couldn't do it without him.

9 Q. Did you consider those communications
10 and discussions to be privileged and confidential?

11 A. The most privileged and most
12 important communications I've ever had for J&J.

13 Q. Would you ever share them with your
14 opposing counsel?

15 A. Never.

16 Q. Why not?

17 A. Because it would be so
18 disadvantageous for somebody trying to deal with
19 resolution to hand their playbook over to the other
20 side.

21 Q. Did your strategy discussions with
22 Mr. Conlan include things like how to participate
23 in, how to initiate, how to continue negotiations
24 with different parties on the other side of the
25 litigation?

1 MR. POLLOCK: Objection; leading.

2 THE COURT: Sustained.

3 BY MR. BRODY:

4 Q. Let me ask you this: You mentioned
5 that you talked about, sort of, the ins and outs of
6 settlement, the who to go to, what to propose. Are
7 those things you discussed with Mr. Conlan?

8 A. Yes.

9 Q. Did those discussions include, along
10 the way, throughout the time you were working with
11 Mr. Conlan, confidential discussions of how much the
12 company might be willing to pay to resolve the talc
13 litigation?

14 A. Absolutely. It was an important part
15 of the conversation.

16 Q. Did it include things as detailed,
17 for example, the futures-only settlement in the
18 Imerys?

19 A. That was --

20 MR. POLLOCK: Your Honor, can I --
21 can we get a point in time, because we've gone --
22 the last one was a broad question. This time it's
23 Imerys. I would like to get a point in time and
24 know what case I'm talking about, because I can't
25 measure which information is confidential if I don't

1 know which case it is and what time period we're
2 talking about.

3 THE WITNESS: Sure. I can explain
4 that.

5 THE COURT: Mr. Brody, are you --
6 well, let Mr. Brody pose that question.

7 MR. BRODY: Sure.

8 BY MR. BRODY:

9 Q. Did there come a time when you and
10 Mr. Conlan were engaged in discussion of a potential
11 futures-only settlement?

12 A. Yes. In the fall of 2020,
13 Mr. Birchfield proposed an outside-of-bankruptcy
14 settlement for the existing tort claimants and an
15 inside-of-bankruptcy futures settlement.

16 Q. Was Mr. Conlan involved in the
17 evaluation of that?

18 A. That was -- yeah, that was in the
19 period of time where I was working with Mr. Conlan
20 every day to evaluate proposals like that, and we
21 certainly worked on that one extensively together.

22 Q. And was Mr. Conlan, in addition to
23 yourself, negotiating directly with the other side
24 during that period?

25 A. Yes. He was talking primarily with

1 the TCC's counsel and the FCR and the FCR's counsel,
2 which, of course, were the most important parts of
3 trying to get a futures-only settlement in the
4 bankruptcy. I didn't have those relationships at
5 the time.

6 Q. In the process of evaluating the
7 potential for a futures-only settlement in the
8 bankruptcy, was Mr. Conlan involved in confidential
9 evaluation of what J&J might be willing to pay for
10 such a settlement?

11 A. Yes.

12 Q. Did that include a review of
13 information prepared by J&J's confidential
14 consultants in the litigation?

15 A. Yes, and -- and my firm, as well,
16 which was also analyzed.

17 Q. Did you consider that work that you
18 were doing at the time relevant to what is going on
19 in the talc litigation today?

20 A. It's the same issues relevant to
21 resolution today, whereas, obviously, as you heard
22 from Mr. Haas, we're still actively trying to
23 resolve this. We still have a plan. We still have
24 great support for a plan. All of the issues are the
25 same. All of the issues remain relevant, and all of

1 the insight that we had back then is as important
2 now as it was then.

3 Q. And are you looking -- I mean, at the
4 end of the day, are you looking for what ultimately
5 will be negotiated, and when you talk about that and
6 you talk about that being important, are you talking
7 about it being important to a negotiated resolution?

8 A. I'm not sure I understand the
9 distinction that you're drawing, but every
10 conversation that we had back then evaluating at
11 first just an outside-of-bankruptcy settlement, then
12 a half-in/half-out settlement, then the Imerys
13 settlement, and then ultimately to LTL, is all still
14 relevant to our thinking today, our approach today,
15 and the resolution that we're working on, still,
16 today. That's what I would be doing if I wasn't
17 sitting here testifying.

18 Q. Have you been involved as outside
19 counsel for Johnson & Johnson in the development of
20 proposals that J&J has come up with to potentially
21 resolve on a global basis the talc litigation?

22 A. Yes, I have.

23 Q. During the time that Mr. Conlan was
24 working as outside counsel for Johnson & Johnson,
25 was he involved in those discussions, as well?

1 A. Yes, he was.

2 Q. Did those discussions, to your
3 recollection, during the time that Mr. Conlan was
4 working as outside counsel for Johnson & Johnson,
5 involve the company's evaluation of settlement
6 matrices to come up with those proposals?

7 A. Yes, it did.

8 Q. And just to provide a little more
9 detail for the benefit of the Court, what -- when
10 you talk about, just generally, a settlement matrix
11 in the context of a mass tort settlement, what are
12 you talking about?

13 A. Given the number of claimants, you're
14 talking about an initial rough way to evaluate them;
15 what are their age, what's their disease state, was
16 their cancer stage 1, 2, 3 or 4. Things like that.
17 So, literally, a grid with different face values
18 based on some very, very basic facts about the
19 claimants.

20 Q. And the work that you did with
21 settlement matrices back in that time period, when
22 Mr. Conlan was serving as outside counsel for
23 Johnson & Johnson, 2020-2021, is the review and
24 analysis of that information germane to the issues
25 that you're dealing with in the talc litigation

1 today?

2 A. It is. Back at that time, we had a
3 Barnes & Thornburg-created settlement matrix, we had
4 a Beasley Allen-created settlement matrix, we had a
5 settlement matrix created by Imerys torts claimants
6 committee that they put in their trust distribution
7 procedures. So we -- and Mr. Conlan had all of
8 those, and we were evaluating all of those and
9 comparing and contrasting. And so Mr. Conlan knows
10 all of my thoughts, all of the company's thoughts on
11 those three proposals.

12 And, indeed, we heard testimony
13 earlier about the most recent matrix put forward by
14 the Legacy company, which, you know, is an iteration
15 of the Beasley -- you know, Andy Birchfield and
16 Beasley Allen's settlement matrix.

17 Q. All right. In all of that time --
18 and I just want to get a sense for the benefit of
19 the Court of how involved Mr. Conlan was in the
20 discussions about issues surrounding claim values,
21 number of future claims, value of future claims,
22 value of present claims. How involved was he?

23 MR. POLLOCK: Objection. I -- first
24 of all, it's compound. But second of all, I really,
25 at this point, want details. I want to know what

1 discussions occurred when.

2 Mr. Haas -- Mr. Murdica, I'm sorry,
3 can keep on testifying, obviously, but I'm concerned
4 that I can't question about what I don't understand.
5 He had discussions about settlement matrices. What
6 discussions? When? Where? Who was involved?

7 THE COURT: Well --

8 MR. POLLOCK: All of these things.

9 THE COURT: I appreciate,
10 Mr. Pollock, your understanding or your lack of
11 understanding. What I'm interested in is, does this
12 witness understand the question.

13 To the extent we can get a time
14 frame, Mr. Brody.

15 MR. BRODY: Well, we're going to get
16 -- yeah, I was going to ask an initial question, and
17 then we were going to zero in on a couple of things.

18 THE COURT: Okay.

19 MR. POLLOCK: Just to be clear, Your
20 Honor, and it's your courtroom and, again, I respect
21 that greatly. It's beyond time frame. It goes to
22 merits, the substance, because you're talking four
23 years where Imerys, LTL, you're talking a massive
24 upset with the Third Circuit. You've got all of
25 these facts coming in at one time, and I'm being

1 told that there were discussions regarding each one
2 of these concepts, but I have no clue what those are
3 and there's nothing in the record to support it.

4 I'm not disputing that discussions
5 occurred. I'm sure Mr. Murdica is telling the
6 truth, but I can't measure what I can't see or
7 understand. There's no records to support that
8 testimony, at all.

9 THE COURT: Can we get a time frame?

10 MR. BRODY: I think, you know, maybe
11 for everybody's benefit, if I could ask Mr. Murdica.
12 BY MR. BRODY:

13 Q. Throughout the period that Mr. Conlan
14 was working as outside counsel for Johnson &
15 Johnson, was --

16 THE COURT: 2020 to February 2022.

17 MR. BRODY: July 2020 to the end of
18 February 2022.

19 MR. POLLOCK: Thank you, Your Honor.

20 BY MR. BRODY:

21 Q. Was the -- was the company
22 internally, in a privileged and confidential
23 context, evaluating claim values, present claims,
24 potential number of future claims, and the potential
25 value of future claims in the talc litigation?

1 A. That's been the case since early 2020
2 until the present.

3 Q. So that was during the entire time
4 that Mr. Conlan was outside counsel for the company,
5 right?

6 A. That's correct.

7 Q. And how involved was he in those
8 discussions?

9 A. I'll try to put a finer detail on it
10 for Mr. Pollock.

11 From the time Mr. Conlan started
12 working on talc, which was sometime in, I believe,
13 August 2020, he became very involved, to the point
14 we were having daily conversations.

15 And Mr. Pollock, it was first about
16 your client's outside-of-bankruptcy proposal --

17 THE COURT: Mr. Murdica, could you
18 address the Court --

19 THE WITNESS: Oh, yes.

20 THE COURT: -- and not directly
21 address Mr. Pollock.

22 THE WITNESS: I'm sorry. I was
23 trying to answer his questions.

24 It was first about an
25 outside-of-bankruptcy proposal, which was a

1 conversation we were having until about September of
2 2020, to the best of your of my recollection. At
3 that point in time, we pivoted to trying to do
4 something in the Imerys bankruptcy. And at that
5 point, at that point in time, Mr. Birchfield and I
6 were all aligned on this and we could not get the
7 approval of the full tort claimants committee in the
8 Imerys bankruptcy.

9 So then we continued to pivot and try
10 to find an agreement that would work for the
11 majority of the TCC in Imerys so that we could get
12 the votes to move the plan forward. We came -- and
13 throughout this whole time, I'm working very close
14 with Mr. Conlan because he's now working for J&J and
15 it's the two of us that are in charge of trying to
16 get this resolution done.

17 At that point, we just keep modifying
18 our proposal until -- by February of 2021, we were
19 very close. And I remember -- I remember it very
20 specifically. I remember where I was, because Joe
21 Braunruether was retiring on March 1st, and we were
22 trying to get this deal done, you know, done and
23 approved by the TCC before he left the company
24 because he worked so hard on it with myself and
25 Mr. Conlan.

1 It turned out that even though we
2 were literally on the one yard line, we thought we
3 would get it done, we didn't get it done.

4 Mr. Haas had been involved since the
5 fall, since he came to J&J, but now he took over
6 duties for talc. By April 15 of 2021, we had a deal
7 with the Imerys TCC, which you heard about. He was
8 asked about, Well, why didn't you enforce it. There
9 was -- we were led to believe that the future claims
10 representative had signed off on it. It turned out
11 it was only the tort claimants committee, itself,
12 and we needed the FCR approval, as well.

13 So, during that entire time,
14 Mr. Conlan and I were working hand-in-hand everyday
15 to try to deliver this for the company, and
16 reporting to Mr. Braunruether and Mr. Haas.

17 I hope that clears it up.

18 Q. And during the period you mentioned
19 around April of 2021, when you were trying to get
20 this across the finish line, did J&J create a term
21 sheet for what was being discussed and what you
22 thought you were going to be able to get across the
23 line?

24 A. Yes, we had a term sheet that was
25 signed off on by the Imerys TCC and the counsel for

1 the Imerys TCC.

2 Q. Prior to providing that term sheet to
3 the TCC, was Mr. Conlan involved with you in
4 privileged and confidential discussions of what that
5 term sheet would look like?

6 A. Absolutely.

7 Q. And did that include, by the way,
8 both ovarian cancer and mesothelioma claimants?

9 A. I believe so.

10 Q. All right. Did the proposal that was
11 developed that you were involved with the
12 confidential discussions on involve a presentation
13 of a settlement grid?

14 A. Yeah -- it did, yes.

15 Q. Were you involved in the creation and
16 evaluation of that grid?

17 A. I was.

18 Q. Was Mr. Conlan?

19 A. Mr. Conlan was involved in all
20 aspects of the proposal. And then, following April,
21 it was April 15th, 2021, that we got TCC approval,
22 Mr. Conlan was working on resolving any issues that
23 the future claims representative had to, you know,
24 deliver the rest of the settlement. And I know that
25 he had many conversations with counsel and with the

1 FCR over the next couple of months after that to try
2 to get that agreement.

3 Q. So, Judge Porto and Judge Singh have
4 heard of it from Mr. Haas about how Mr. Conlan was
5 personally involved in negotiating with the TCC and
6 the FCR in the Imerys bankruptcy.

7 Just so that the record is clear on
8 this, can you explain in that respect what his role
9 was?

10 A. Yes. Like I said, he was my
11 counterpart as resolution and bankruptcy counsel,
12 because he was also a bankruptcy lawyer, to try to
13 deliver the settlement.

14 And so, when we were negotiating --
15 again, this was early 2021, a lot was still done by
16 Zoom -- he had relationships with, longstanding
17 relationships with at least one of the tort
18 claimants committee lawyers in Imerys, and so he
19 would appear on those, he would negotiate, you know,
20 separately, and then he would negotiate with the
21 future claims representative and the future claims
22 representative counsel because they had been in many
23 bankruptcies together and had a longstanding
24 relationship.

25 Q. And was this one of the time periods,

1 early 2021, when you were having daily or near-daily
2 communications with Mr. Conlan?

3 A. Yes. Really, that remained the case
4 from when he started working for J&J, until about --
5 until very shortly after the bankruptcy filing in
6 LTL. So, to put a time frame on it, after, I would
7 say, October -- after the end of October of 2021, I
8 didn't work with Mr. Conlan on a daily basis
9 anymore.

10 Q. Okay. So pretty much up through the
11 filing of LTL?

12 A. And a couple of weeks beyond it,
13 because we were working on potential mediation
14 options within LTL at that point.

15 Q. Okay. At the time that you and
16 Mr. Conlan were talking in early 2021, when he was
17 engaged in conversations with representatives or
18 counsel for the TCC and the FCR in the Imerys
19 bankruptcy, did you and he discuss negotiating
20 strategies?

21 A. Of course.

22 Q. And you talked about imparting to
23 him, you know, what you knew from your experience,
24 which predated his, in attempting to negotiate
25 resolutions of the talc litigation for Johnson &

1 Johnson, did that come into play in those
2 discussions that you were having with him?

3 A. It did, because it wasn't just talc.
4 A lot of the lawyers in the talc litigation were
5 lawyers that I resolved other mass torts with. This
6 wasn't the first mass tort I've worked as J&J
7 resolution counsel on.

8 In fact, Judge Porto, you may or may
9 not remember I resolved the hernia mesh MCL before
10 you a year and a half ago.

11 THE COURT: Physiomesh.

12 THE WITNESS: Physiomesh -- well, no,
13 no. Hernia -- Proceed, Proceed.

14 BY MR. BRODY:

15 Q. At some point in July of 2021, do you
16 recall negotiations with the TCC and the FCR over
17 the Imerys plan becoming stalled?

18 A. I didn't hear you on the time frame,
19 but, yes. In the middle of 2021, we were making no
20 further progress with the FCR, as far as I could
21 tell.

22 Q. Right. And I -- I'm sorry, I
23 referenced in my question July of 2021.

24 A. That sounds --

25 Q. Does that sound right?

1 A. Yes.

2 Q. Did you consider strategies for J&J
3 in response to those negotiations becoming stalled?

4 A. Of course. We -- we're constantly
5 working on resolution.

6 Q. Was Mr. Conlan involved in those
7 discussions, as well?

8 A. He was, at that point, yes.

9 Q. Do you consider those discussions at
10 that time period as privileged and confidential
11 discussions that are relevant to what is going on in
12 the talc litigation today, in 2024?

13 A. Very much so. We were in a similar
14 position. We were outside of bankruptcy. At that
15 point, we were considering a bankruptcy filing, and
16 we were discussing all of our options that we had on
17 the table, which is very much where we find
18 ourselves today. It's the same situation.

19 Q. Now, were you involved in mediation
20 in the LTL bankruptcy?

21 A. I was. I was the lead for Johnson &
22 Johnson in the LTL bankruptcy mediation.

23 Q. Do you consider the privileged and
24 confidential communications that you had with
25 Mr. Conlan while he was outside counsel to Johnson &

1 Johnson to be relevant to what you were dealing with
2 in the LTL bankruptcy mediation?

3 A. Yes, because the mediation was
4 dealing with -- it's the same thing. It's dealing
5 with resolution. We were trying to resolve it in
6 mediation.

7 Q. Now, you're aware that at some point
8 in time, as we discussed, Mr. Conlan left the law
9 firm of Faegre Drinker, right?

10 A. Yes.

11 Q. And at the time he left, do you know
12 whether the LTL bankruptcy was pending?

13 A. It would have been, yes.

14 Q. Okay. And is that a time period in
15 which you were involved in attempting to negotiate a
16 resolution within the bankruptcy structure?

17 A. Yes. That was mediation in LTL 1.

18 Q. All right. And were you also
19 involved in mediation in LTL 2?

20 A. I was. Same role.

21 Q. Did you know at the time that
22 Mr. Conlan was communicating directly with
23 Mr. Birchfield and other members of the Beasley
24 Allen firm about the talc litigation?

25 A. I had no idea. Like Mr. Haas, I

1 found out for the first time two weeks ago that not
2 only had that been going on since April, that it was
3 allegedly related to the mediation, but as the lead
4 mediation representative for J&J, I can tell you
5 that I never heard a single thing about that until
6 we got the privilege log two weeks ago. And I was
7 kind of dumbfounded, and I was in close contact with
8 the mediators throughout the mediation, of course,
9 because that was my job, and to my knowledge, the
10 mediators didn't know, either.

11 Q. When you learned this a couple of
12 weeks ago, were you concerned?

13 A. I was extremely concerned. I -- in
14 my career, I have never seen anything like that. It
15 would be as if I, having negotiated the Prolene
16 settlement, while it's still pending and while we're
17 trying to get to the 95 percent, decided to quit and
18 go become a consultant for the Fleming firm. It's
19 -- I -- it's unimaginable to me that that could
20 happen.

21 Q. And just for the benefit of the
22 Court, in terms of your participation that you're
23 referring to, in mediation, during the LTL
24 bankruptcy, the second time around, what time frame
25 was that?

1 A. That would have been in the May 2023,
2 until it was -- until the bankruptcy was dismissed
3 in the July of 2023 time frame.

4 Q. Okay. Now, we've talked about when
5 Mr. Haas first learned via the October 18th, 2023
6 email that he got from Mr. Conlan, when he first
7 learned that Mr. Birchfield was working with
8 Mr. Conlan on the settlement matrix.

9 When did you first learn that
10 Mr. Conlan and Mr. Birchfield were collaborating?

11 A. I --

12 MR. POLLOCK: Objection to the use of
13 "collaborating."

14 MR. BRODY: Your Honor, it's just a
15 question. He can tell me if I've gotten something
16 wrong, and it's --

17 THE COURT: I'll overrule the
18 objection.

19 THE WITNESS: To the best of my
20 recollection, I learned a few hours before that
21 because I was in Las Vegas at the Mass Torts Made
22 Perfect conference, and numerous plaintiffs' lawyers
23 came up to me and started telling me about how the
24 talc was going to settle via this Legacy plan that
25 Andy was working on, because I was told that he was

1 telling people that at the conference. I heard
2 about it and I immediately asked Mr. Haas what could
3 possibly be going on, because that was the first
4 time I heard of it.

5 BY MR. BRODY:

6 Q. So all throughout the mediation
7 process, did anybody ever come to you and say, We're
8 working with Jim Conlan on the plaintiffs' side?

9 A. No. I talked to Mr. Birchfield about
10 it after that, in October, but not during the
11 mediation process.

12 Q. All right. So it was roughly, you
13 said, a few hours earlier on October 18th that you
14 first learned of this collaboration between
15 Mr. Birchfield and Mr. Conlan?

16 A. It may have been the night before,
17 but I learned it via other people coming up to me,
18 because they all know that I'm responsible for
19 resolution of talc, and saying, Hey, I heard this is
20 settling and, you know, they were told that we would
21 have a resolution by November.

22 Q. So the Court has heard a bit about
23 the article that was published by Bloomberg that
24 Mr. Conlan wrote on November 2nd of 2023, and that's
25 at -- I think it's Exhibit 15 in the binder that you

1 have in front of you.

2 A. Yes.

3 Q. And if you turn to tab 6, there's a
4 letter that you wrote there?

5 A. Yes.

6 Q. And you wrote this letter to
7 Mr. Conlan?

8 A. I did.

9 Q. Why did you write this letter to
10 Mr. Conlan?

11 A. I -- well, a couple of reasons. One,
12 I was asked to communicate with Mr. Conlan on it,
13 but I felt compelled to because I had read the
14 article and I thought that the article was talking
15 about the LTL bankruptcy, and I was afraid that
16 Mr. Conlan was disclosing privileged information.
17 And so, I haven't read this probably since I wrote
18 it, but I essentially asked him to stop.

19 Q. Okay. And it was, I guess we know
20 from Mr. Haas' testimony and from the exhibits that
21 are in the record that it was just four days after
22 you wrote that letter that Mr. Conlan sent his
23 letter to the board of directors, right?

24 A. That's right.

25 Q. Did you review the letter that, at

1 the time, that he sent to the board of directors?

2 A. It eventually made its way to me,
3 likely via Mr. White and Mr. Haas, and I did read
4 it.

5 Q. In the letter, Mr. Conlan represented
6 that he had already discussed the proposal with lead
7 counsel for the talc claimants, right; and that's
8 tab -- should be tab 7?

9 A. Right.

10 Q. Did you have any idea that Mr. Conlan
11 had been working with Mr. Birchfield for six months
12 at that point?

13 A. No. My presumption at that point was
14 that sometime after the dismissal of LTL 2, they had
15 talked, and that's why I heard at that conference in
16 Las Vegas in -- on October 18th or 17th, that this
17 was something they were working on together. And
18 when I -- I assumed the same thing on November 9th.
19 It wasn't until two weeks ago when we got that
20 privilege log that I realized they had been working
21 closely together for more than six months. And I
22 believe there were hundreds of entries on the
23 privilege log that we can't see, but there were --
24 there was a lot of collaboration or contact, or
25 whatever word you want to use.

1 Q. Mr. Birchfield never disclosed that
2 to you?

3 A. To the best of my knowledge, no. And
4 I was genuinely shocked and surprised when I learned
5 that, so I can't imagine I ever would have known.

6 Q. Nobody else from Beasley Allen
7 disclosed that you?

8 A. No.

9 Q. Nobody else on the plaintiffs' side
10 of the V in this litigation ever disclosed that to
11 you?

12 A. I truly had no idea, and I definitely
13 -- I was also shocked to see that it was claimed to
14 be part of the mediation, because it never came up
15 in the mediation.

16 MR. BRODY: Thank you, Mr. Murdica.

17 THE COURT: Thank you.

18 MR. POLLOCK: Can we take a
19 five-minute break?

20 THE COURT: We're going to take a
21 ten-minute break.

22 MR. POLLOCK: Thank you, Judge.

23 (A recess was taken.)

24 THE COURT: Cross-examination,
25 Mr. Pollock?

1 MR. POLLOCK: Yes, Your Honor.

2 THE COURT: You may be seated.

3 THE WITNESS: Thank you.

4 MR. POLLOCK: Can I ask the Court and
5 opposing counsel a critical question. It is
6 currently 3:41. Let's assume I move quickly and I'm
7 done by 4:15, and then I assume Mr. Brody, who is a
8 capable lawyer, may have some redirect. That's
9 going to put us around 4:30, 5 o'clock, or so.

10 THE COURT: We're not going to go --
11 well, I prefer not to go past 4:30. I don't want to
12 go past 5 o'clock. But it looks like we're not
13 going to finish today.

14 MR. POLLOCK: So can we reconvene
15 tomorrow?

16 THE COURT: I don't necessarily know
17 if Judge Singh's schedule accommodates that. Mine
18 doesn't. I don't think we were really planning on
19 consecutive days, Mr. Pollock, Mr. Brody. But we
20 can --

21 MR. POLLOCK: It's so much fun
22 together.

23 THE COURT: Pardon?

24 MR. POLLOCK: It's so much fun
25 together.

1 THE COURT: Well, it is, and I've
2 spent the last four weeks in this particular
3 courtroom on another matter.

4 MR. POLLOCK: Yes.

5 THE COURT: On another mesh matter.

6 So why don't we put our heads
7 together. We'll leave today. We can't be
8 consecutive days. We're all going to have to look
9 at our calendars. Judge Singh and I are going to
10 have to look at our calendars, also.

11 I will tell you the week of the 15th
12 of April, I have speaking commitments. We have a
13 Civil Chancery seminar, statewide, and it's
14 scheduled that week, and I'm doing something at the
15 Boardwalk seminar, so that week is out. But we'll
16 all put our heads together, Mr. Pollock, Mr. Brody.

17 MR. POLLOCK: Thank you, Your Honor.

18 MR. BRODY: Okay.

19 MR. POLLOCK: I'm ready to proceed,
20 Judge.

21 THE COURT: Sure.

22 - - -

23 CROSS EXAMINATION

24 - - -

25 BY MR. POLLOCK:

1 Q. Mr. Haas, we have met before. My
2 name is Jeff --

3 A. Mr. Murdica.

4 Q. I'm sorry.

5 THE COURT: Mr. Murdica.

6 Q. The other guy. I just gave you a pay
7 raise. Sorry. Mr. Murdica, I apologize. I'm still
8 Jeff, or Mr. Pollock, whatever you want.

9 You mentioned before a term sheet,
10 and I think it was in the Imerys matter. Do you
11 recall the term sheet discussion?

12 A. I -- I believe, Mr. Pollock, you're
13 referring to my testimony about the April 15th, 2021
14 term sheet in the Imerys matter.

15 Q. Correct.

16 A. Is that right? Okay.

17 Q. Am I correct in understanding that
18 document was not fully executed?

19 A. There were no signatures on it;
20 however, it was represented by counsel to the tort
21 claimants committee that those terms had the support
22 of the tort claimants committee, and, in fact, we
23 even exchanged example scenarios because there was a
24 refund portion of it and everything. Well, it
25 wasn't signed because the FCR hadn't signed off on

1 it. It was agreed to by the majority of the tort
2 claimants committee and their counsel.

3 Q. Excellent.

4 With regard your own work, there's a
5 thing called Thomson Reuters which allows me to be
6 snooppy and look at what people do as lawyers, and it
7 indicates that you spend about 66.9 percent -- it's
8 pretty precise, by the way -- of your matters for
9 J&J. And then it has McKesson, and Walgreens, and
10 some other folks at, like, 4.8 and 3 percent.

11 Give or take 5 percent, does that
12 sound about right, that over half your work is for
13 J&J?

14 A. I don't -- I don't think your data is
15 right. I haven't represented McKesson in at least a
16 decade. However, way more than half of my work is
17 for J&J.

18 Q. Excellent.

19 And you actually knew Mr. Haas -- and
20 now I get the names right. I got it wrong before --
21 from the fact that you both worked together at
22 Patterson Belknap Webb & Tyler, correct?

23 A. That's correct. We were both
24 partners at Patterson Belknap.

25 Q. Excellent.

1 MR. POLLOCK: You don't mind if I sit
2 down, do you, Your Honor?

3 THE COURT: That's all right.

4 BY MR. POLLOCK:

5 Q. Getting to the core question before
6 the Court, which is RPC 1.6, are you familiar with
7 Rule of Professional Conduct 1.6?

8 A. I don't know the exact terms of it,
9 but I know the rules that are at issue.

10 Q. So the Rule of Professional Conduct
11 1.6, and it's more wordy than I say, it is that you
12 cannot disclose confidential information. That
13 concept is pretty basic, right?

14 A. Seems it to me.

15 Q. Especially as a lawyer, right?

16 A. Especially as a resolution lawyer.

17 Q. Excellent. As a resolution lawyer.

18 Can we agree that other than the
19 records before us, you do not have any email from
20 Mr. Conlan to Mr. Birchfield, you don't have any
21 memos from Mr. Conlan to Mr. Birchfield, you don't
22 have any photos of Mr. Conlan and Birchfield in
23 compromising positions, you've got nothing out there
24 that discloses a -- they disclosed confidential
25 information belonging to J&J?

1 A. Mr. Pollock, the only way I can
2 answer that is that, in the last two weeks, I've
3 seen a privilege log that has hundreds of logged
4 emails between Mr. Conlan and Mr. Birchfield, and it
5 says the subject matters, and the subject matters
6 included a claimant grid and all of the very
7 confidential information we were talking about. And
8 I can tell you, as somebody who has done almost
9 exclusively mass tort resolution for the last
10 decade, that it would be impossible to jump and talk
11 to the other side and separate in my brain
12 everything that I've learned by representing J&J, to
13 suddenly be pure of mind and not disclose
14 confidential information. I can't think of any
15 possible way that's the case.

16 Q. So since you went to the
17 hypothetical, I'm going to go hypothetical.

18 Let's assume you left tomorrow and
19 you decided to become something else. You were
20 going to decide -- you were going to start your own
21 talc business, you were going to start -- oh, that's
22 probably a bad choice these days. You were going to
23 choose something else, a steel business. You were
24 going to do anything else.

25 A. Yes, sir.

1 Q. Isn't it true that when Mr. -- if I
2 take that same paradigm and I apply it to
3 Mr. Conlan, he switched out completely. He spent 32
4 years at Sidley & Austin, right, about?

5 A. I heard that testimony.

6 Q. Okay. So he spent a long time at
7 Sidley & Austin. Then went to Faegre, right?

8 A. Right.

9 Q. And at that point, he decided: I've
10 had enough. I'm starting my own company, Legacy.
11 Right?

12 A. Right.

13 Q. So he goes to Legacy, and Legacy is a
14 completely different deal. Legacy, the idea is,
15 I've got Warren Buffet and Apollo Investing and all
16 these fancy guys behind me. What I'm going to do is
17 go out and buy the kind of mass tort claims that you
18 have yourself, that you address in your professional
19 career, right?

20 A. Well, I -- I know that's what he did,
21 and I know that they pitched that idea about talc to
22 J&J, and I know that he pitched that same idea to
23 J&J, I believe when he was working for J&J. That's
24 one of the options.

25 Q. And there are other companies who

1 compete with Legacy, right? There are other
2 entities that J&J has communicated with over the
3 past four years about possibly trying to sell out,
4 pass off, whatever you want to call it, its
5 liabilities in order to get them off the
6 spreadsheets, right?

7 A. I understand that, and that's why, to
8 me, it was particularly shocking that Legacy, with
9 our former counsel, is the one that they would
10 choose to talk to if they were really trying to talk
11 to a company that did that during the mediation.

12 Q. But J&J never got a single offer from
13 any other company like Legacy gave an offer which --
14 to the document that you referred to, Legacy is the
15 only one who said, I've got a proposal for you.

16 A. I don't know if that's the case, but
17 I know we didn't -- to my knowledge, we never
18 solicited a proposal from any such company.

19 Q. But you do know that other companies
20 have approached J&J or J&J has had discussions with
21 them, and Legacy is the only one that said, We think
22 we have a viable way of doing this.

23 A. I don't know that other companies
24 ever approached J&J. That probably would have been
25 a better question for Mr. Haas. But I can tell you

1 the only one I know about is Legacy because, of
2 course, we didn't solicit them.

3 Q. So when Mr. Conlan is sitting in his
4 new role --

5 A. Yes.

6 Q. -- and his new role is, I am going to
7 -- and we can actually go through it, if it makes
8 you more comfortable, sir. Let me find it real
9 quickly while I fumble. It's going to be Exhibit 7.

10 A. Yes, sir.

11 Q. And, Mr. Haas, you were involved in
12 LTL, right?

13 A. Mr. Mordica.

14 Q. I'm sorry. God. I apologize.

15 A. It's okay.

16 Q. Mr. Mordica, you were involved in
17 LTL, right?

18 A. I was the lead counsel for the
19 mediation.

20 Q. Excellent.

21 So the two experts I talked about
22 before, you are familiar with their opinions,
23 correct?

24 A. I have consulted with Mr. Mullin, as
25 I testified on direct, regarding some of the

1 settlement information and claims information when I
2 was working with Mr. Conlan. I don't believe that
3 I've reviewed his report or the other expert that
4 you mentioned.

5 Q. Lead counsel, and you didn't review
6 the expert reports?

7 A. Lead counsel for the resolution, for
8 the mediation. I'm not litigation counsel intel.

9 Q. I apologize. Fair enough. Now I've
10 cleared up my misunderstanding.

11 I will represent to you that in those
12 documents, they indicate that the range for
13 resolution for J&J -- and this is J&J's expert -- is
14 between 12 and 21 billion dollars. In this case, on
15 the document, Legacy has \$19 billion, or such
16 greater amount as determined by J&J's independent
17 auditors.

18 So, is there any reason in your mind
19 to believe that Legacy was working with your
20 experts?

21 A. I had no reason to believe, I don't
22 know otherwise, that Legacy was working with our
23 experts. And I heard you ask Mr. Haas those
24 questions, and I'm not sure where those numbers came
25 from. I certainly wouldn't subscribe to them. I

1 know from having this role that talc can settle for
2 the amount that was on the table, but for the TCC,
3 who were the objecting party in LTL 2.

4 Q. So the \$19 billion, do you believe
5 that that was a contrivance by Andy Birchfield?

6 A. I have no idea where that came from,
7 but I know that that's not what it takes to resolve
8 talc litigation.

9 Q. Okay. So, it's not what J&J wants,
10 it's not what you believe is the right number,
11 correct?

12 A. No. I'm referring to the work I
13 actually did, which was to get the lawyers
14 representing the talc claimants to negotiate with me
15 and come up with an agreed plan and come up with a
16 number. It's not a dispute; it's the actual amount
17 of money that it would have taken at that time to
18 resolve the talc claims, if the claims had been --
19 if it had been brought to a vote.

20 Unfortunately, it was not brought to
21 a vote because there was opposition by your client
22 and others in the bankruptcy.

23 Q. Mr. Murdica, you have better
24 knowledge of the case than I do, so I'm going to
25 have to back you up a little teeny bit there.

1 A. Sure.

2 Q. You said "at the time" and there was
3 "a vote." Are we talking Imerys or are we talking
4 LTL?

5 A. So, we can talk about anyone you
6 want. I was referring to LTL 2. The difference
7 between the first bankruptcy and the second is that
8 in the second bankruptcy, we filed along with the
9 support of more than 60,000 claim -- along with the
10 support of the lawyers representing more than 60,000
11 claimants. And I know from the settlement
12 communications that I had that there was far more
13 support than that. All we had to do was be able to
14 get to a bankruptcy vote, which we were not able to
15 do because the objectors prevented that.

16 Q. Were two of the people you spoke with
17 Mr. Onder and Mr. Nachawati?

18 A. Those are two of many, yes.

19 Q. And those two had big chunks of -- a
20 big hunk of cases, right? Legal term.

21 A. Approximately 5,000 and 20,000
22 claimants, respectively.

23 Q. So 25,000, let's call it. It's a
24 pretty big number, right?

25 A. It is. It's about a quarter of the

1 claims that I expect to vote when there ultimately
2 is a resolution vote.

3 Q. And you understood when you spoke to
4 Mr. Onder and Mr. Nachawati that they were members
5 of talc claimants committee, correct?

6 A. So, they weren't in the second
7 bankruptcy because they had -- they had joined to
8 support the plan put forward in the second
9 bankruptcy. They were not included on the tort
10 claimants committee.

11 Q. Okay. What role did they play in the
12 second LTL?

13 A. Well, they actually testified in
14 favor of the plan prior to the dismissal, and they
15 represented their claimants on -- there was an ad
16 hoc committee of supporting counsel, and what they
17 had to do in addition to supporting the plan was
18 that Judge Kaplan ordered that they not only tell
19 all of their clients that they were being
20 represented by them in the bankruptcy, but that
21 Mr. Nachawati and Mr. Onder were supporting the plan
22 forwarded in the bankruptcy, because Judge Kaplan
23 wanted to make sure that all of the claimants that
24 were in support of the plan had an understanding
25 that their counsel was making that representation.

1 Q. So let me run this back for a second.
2 LTL 1, they were on the tort claims committee then,
3 correct?

4 A. You're referring to Mr. Onder and
5 Mr. Nachawati? Yes, they were.

6 Q. Yes. And you spoke to them at that
7 point in time when they were on the tort claimants
8 committee for LTL 1?

9 A. I spoke to them before they were on
10 the committee, I spoke to them after they were on
11 the committee, and while they were on the committee,
12 because that was my job and they were part of the
13 bankruptcy mediation in the first bankruptcy.

14 Q. Excellent. And I want to focus on
15 LTL 1, not LTL 2; fair enough? Do you understand
16 where I'm --

17 A. I'll answer whatever you ask me, as
18 long as my counsel doesn't object.

19 Q. I appreciate it, sir.

20 So, during the course of LTL 1, you
21 understood that they were on the tort claimants
22 committee and you understood that the tort claimants
23 committee had put a number on this over the \$9
24 billion that J&J wanted to resolve this matter at,
25 correct?

1 A. At various points, I think you heard
2 Mr. Haas' testimony earlier, that at some -- I
3 believe it was June of 2022, through mediation, and
4 I don't want to violate the mediation privilege that
5 you were referencing earlier, but there was a --
6 that the Sunday night deal that Mr. Haas was
7 referring to with the tort claimants committee that
8 we understood was a deal for \$8.9 billion.

9 Q. Correct. And that's what -- and that
10 -- I'm sorry? So let's assume that that's right.

11 With regard to that number, you
12 understood that the other members of the tort
13 claimants committee did not want the \$9 billion,
14 let's call it -- 8.9, let's call it 9 billion just
15 for shorthand -- they did not want the \$9 billion,
16 they thought the number should be higher, correct?

17 A. So my understanding at that time,
18 what I -- what you heard Mr. Haas testify to and
19 what I understood from the mediators, is that 8.9
20 billion got the majority of the tort claimants
21 committee, which -- and that's how it works. So the
22 majority were in support at that time.

23 Q. And the -- so if the tort -- if
24 Mr. Birchfield was to say that the tort claimants
25 committee wanted the \$19 billion number and that it

1 was not the majority of people that wanted the \$19
2 billion number, you would believe that would be
3 false testimony?

4 A. Yes. Particularly because nobody was
5 saying \$19 billion at the time. What you have to
6 understand, Mr. Pollock, is this was a negotiation
7 that literally has gone on in phases for years and
8 keeps churning and working as different things
9 happen in the efforts to resolve. But there was no
10 one in June of 2022 saying that it took \$19 billion
11 to resolve this. Nobody. So that would be a lie.

12 Q. Fair enough. Let me move on to your
13 Exhibit 14, if you don't mind. And it's going to be
14 Exhibit 14 and I'm going to be referring -- you're
15 welcome with any document I refer you to to review
16 the entire document, if you so desire. I'm going to
17 point you to the portion I care about just to move
18 things along.

19 Understood?

20 A. Yes, sir.

21 Q. Okay. Paragraph 8, you say: "On
22 November 5, 2023, I wrote a letter to Mr. Conlan on
23 behalf of J&J expressing J&J's concerns that
24 Mr. Conlan was improperly disclosing J&J's
25 confidences that he learned in the course of his

1 privileged attorney-client relationship with the
2 Company."

3 Do you see that?

4 A. I do.

5 Q. Now, you then write a letter, and
6 it's Exhibit 6 -- and I thought about this ahead of
7 time -- Exhibit 6, and this is your letter to
8 Mr. Conlan, saying, "Dear Jim: You learned --" and
9 I'm looking at the last paragraph, first page --
10 "You learned highly privileged information about J&J
11 and LTL strategies from the attorney-client
12 relationship. And while publicly disparaging your
13 own legal strategy that you recommended to J&J might
14 be permissible if J&J or LTL were not included in
15 the article..."

16 Do you see that?

17 A. I do.

18 Q. Now, is it your position that it was
19 Mr. Conlan's idea to use the Texas Two-Step in LTL?

20 A. Yes, that was one of the options that
21 he presented to myself and Mr. Haas.

22 Q. So, prior to LTL being filed, it's
23 your position that he suggested we use the Texas
24 Two-Step?

25 A. I --

1 MR. BRODY: Objection, Your Honor. I
2 just -- if the question is, Was Mr. Conlan involved
3 in discussions of the idea, yes or no, that's fine.
4 But if we get into the specific of what was
5 Mr. Conlan's position on it, what was the back and
6 forth, the substance of the evaluation --

7 THE COURT: I don't think that's
8 where Mr. Pollock is going.

9 MR. BRODY: All right. I just have a
10 privilege objection, if that's where it goes.

11 THE COURT: Sure.

12 Am I right, Mr. Pollock?

13 MR. POLLOCK: You are right, I think.

14 BY MR. POLLOCK:

15 Q. I mean, here's the issue I've got.
16 It says "your own legal strategy." That's what you
17 -- that's the phrase you used.

18 A. Yes.

19 Q. Am I correct that you're saying that
20 the filing of LTL was Jim Conlan's legal strategy?

21 A. To the best of my recollection, and
22 I've recently seen an email written by Mr. Conlan --

23 MR. BRODY: I'm sorry, I don't want
24 you to -- if you're, Mr. Murdica --

25 THE COURT: No attorney-client

1 privilege disclosed.

2 MR. BRODY: Yeah, I don't want you
3 to --

4 MR. POLLOCK: Yes or no.

5 MR. BRODY: I don't want you to go
6 into the substance of a communication that
7 Mr. Conlan made on this while he was counsel for
8 J&J. I apologize for cutting you off.

9 BY MR. POLLOCK:

10 Q. How about a yes or no?

11 A. A two-step bankruptcy is one of the
12 options that Mr. Conlan suggested multiple times to
13 resolve our talc liability.

14 Q. And I just want to be clear on one
15 thing. Is this before it was filed or after it was
16 filed?

17 A. Before it was filed.

18 Q. Thank you, sir.

19 With regard to -- in this letter you
20 wrote, you -- this actually comes out of your
21 certification, which is -- I had it here a second
22 ago -- 14. Let's turn to 14. Someone's just yelled
23 it at me, so it's got to be right.

24 A. It is.

25 Q. Okay. Exhibit 14. In Exhibit 14,

1 you say -- I just had the damn thing. I'm sorry.
2 -- that he proposed -- I'm sorry. I'm still
3 struggling.

4 A. You were on paragraph 8.

5 Q. Paragraph 7. It's paragraph 7, I
6 think, right? No.

7 THE COURT: Paragraph 8 was the
8 letter that Mr. Mordica addressed to Mr. Conlan.

9 MR. POLLOCK: Yeah, I'm sorry I'm
10 struggling here, Judge. I apologize.

11 THE COURT: Take your time.

12 BY MR. POLLOCK:

13 Q. Yeah, paragraph 8. So paragraph 8 --
14 and when you signed the certification, the
15 certification which is Exhibit 12, you were
16 attempting to be truthful, accurate, and complete,
17 right?

18 A. Of course.

19 Q. And in paragraph 8, you mentioned
20 that Mr. Conlan -- you wrote a letter, Mr. Conlan
21 wrote a letter, I wrote a letter to Mr. Conlan.
22 That's Exhibit 6. But you don't include
23 Mr. Conlan's response, do you?

24 A. I didn't include Mr. Conlan's
25 response. He responded something to the effect of,

1 Jim, you should call me because this would be a
2 really great option for J&J.

3 Q. Wasn't it a little stronger than
4 that, that he completely disagreed with the
5 characterizations that you made?

6 A. If you show it to me, I'm happy to
7 testify about it. I do -- what I specifically
8 remember is that he wrote me back, and he said
9 something -- at least part of it said, "Jim, give me
10 a call," and then we texted about setting up a call,
11 and then it never happened, because I was in court
12 the next day. I forget. Somehow our wires got
13 crossed, but I never ended up speaking to him.

14 Q. So you don't believe that when he
15 responded to your letter of November 5, two days
16 later, that he directly controverted the argument
17 that he violated the attorney-client privilege?

18 A. He very well may have, Mr. Pollock.
19 If you show it to me, I'll tell you. I'm sure
20 that's his position.

21 Q. But you don't recall?

22 A. I don't. What I remember is that I
23 was going to talk to him, and it didn't happen.

24 Q. In hindsight, do you think it would
25 have been worthwhile telling the Court that while

1 this is your letter of November 5, that Mr. Conlan
2 refuted that position and disagreed with you?

3 A. Mr. Pollock, I don't understand why.
4 It's very clear to everybody here that
5 Mr. Birchfield and Mr. Conlan are saying that
6 there's no violation here. You have been saying it
7 over and over.

8 Q. Right, but this is simultaneously, at
9 the same time, it's contemporaneous with the
10 statement, it's two days later, and he directly
11 controverts what you have to say; and, yet, you
12 chose to leave that one out. Why?

13 A. I didn't choose to leave it out,
14 Mr. Pollock. And had I known at the -- when I wrote
15 this letter, it was just to get him to stop the
16 things that he was doing. Had I known at that time
17 that he had been working with Mr. Birchfield for six
18 months, the letter would have been very different.

19 Q. Well, you mentioned that -- you and
20 Mr. Haas both have mentioned that Mr. Conlan and
21 Mr. Birchfield were working together for a while,
22 they were working together for six months. Hadn't
23 Mr. Conlan been meeting with people at J&J off and
24 on for months before that on behalf of Legacy,
25 attempting to present a resolution that might take

1 the liabilities off the J&J balance sheets?

2 A. Mr. Pollock, not with me. But I
3 heard Mr. Haas' testimony about one meeting, and I
4 also heard that it was never disclosed during any
5 meeting that he was working with Mr. Birchfield and
6 they had been doing so for six months.

7 Q. Well, you reviewed the emails -- the
8 binder here of the evidence record is pretty thin.
9 I assume, being a capable lawyer at Barnes &
10 Thornburg, you reviewed these documents in advance
11 of appearing here today, right?

12 A. I can't say that I reviewed all of
13 them, but I reviewed my declaration that you just
14 referenced.

15 Q. Okay. Well, if we go to Exhibit 4.
16 This is Jim Conlan to Van Arsdale, and Douglas
17 Dachille, and some other folks, on October 18, 2023.

18 Trailing is a series of other
19 communications, right? October 6, 2023. Behind
20 that is September 8, 2023. We go back to August 21,
21 2023. So you've got a series of communications
22 between Plenary Hearing 23 and Plenary Hearing 27,
23 where Mr. Conlan is working with the board at J&J,
24 or members of the leadership, let's say, of J&J,
25 correct?

1 A. So, I was not on any of these,
2 Mr. Pollock, and I don't know -- I mean, that's your
3 characterization of them. I heard Mr. Haas'
4 testimony, and I see what's in the documents, and I
5 don't see them working collaboratively with the
6 board or anything like that. I see a couple sparse
7 communications and ultimately a rejection.

8 Q. So let's take them one by one.

9 A. Okay.

10 Q. Plenary Hearing 26, this did from Van
11 Arsd -- Duane Van Arsdale to James Conlan -- or to
12 Doug Dachille, with a cc to James Conlan.

13 (As read): Thanks for the note and
14 nice to meet you as well. I have copied Erik Haas
15 and Andrew White who would also like to join the
16 discussion. I will ask Darlene (copied here) to
17 coordinate and propose a few dates to get us -- to
18 get us together in the future. We'll be back to you
19 shortly.

20 Do you see that?

21 A. Yeah, Mr. Pollock, I see that, and it
22 looks like to me like somebody at JP Morgan was
23 perhaps doing a favor for Mr. Van Arsdale making the
24 introduction to somebody at J&J, and then J&J
25 writing back, Nice to meet you. That's all I see.

1 Q. And you see James Conlan, Legacy
2 Liability, right?

3 A. Correct.

4 Q. It's in the third -- it's in the cc
5 there.

6 A. Yes.

7 Q. No one at J&J set off fireworks,
8 alarms, you know, call the FBI, call the rules --
9 the ethics committee, and said, Wait a minute, James
10 Conlan is working on this matter; isn't that
11 correct? No one said a word?

12 A. As far as I know, that's correct,
13 although Mr. Conlan had suggested, in addition to
14 the two-step bankruptcy, this was one of the menu of
15 options he provided for us strategically while he
16 was working for us, too. So for him to suggest that
17 now, not in the context of working with plaintiffs,
18 I imagine it wasn't surprising. But, again, I was
19 not on these.

20 Q. So it was okay -- I know you keep on
21 looking at Mr. Haas, but with regard to this --

22 A. Actually, I'm not looking at
23 Mr. Haas. I'm looking at you and I'm looking at
24 Mr. Brody.

25 Q. Fair enough.

1 With regard to the statement here,
2 all he is doing is reaching out, saying, We would
3 like to talk. J&J understands quite clearly he is
4 no longer at Faegre. Mr. Haas has already testified
5 to that. He is now working for Legacy Liability.
6 That's his position. He has an email, Legacy
7 Liability.

8 Did anyone at J&J, that you ever
9 heard, say, Oh, my God, Jim Conlan is still involved
10 in asbestos on behalf of Legacy Liability?

11 A. Are you talking about in August of
12 2021?

13 Q. I'm asking, in August of 2021, did
14 anybody ever say, Oh, my God, he's still involved in
15 asbestos?

16 A. I did not hear that.

17 Q. I'm sorry. 2023.

18 A. Mr. Pollock, again, I did not hear
19 that in August of 2023. As you can see, I'm not on
20 these emails.

21 Q. You're not. That's true. But you
22 were, as you pointed out earlier, testified you
23 talked routinely with Erik Haas. You had been a
24 partner at Patterson Belknap with Mr. Conlan. You
25 had worked with Mr. Conlan all the time. You had

1 worked with him regularly and discussed all kind of
2 issues.

3 And you're telling me, on August 21,
4 Plenary Hearing 26, August 24, September 28th, all
5 the way through to, what is it, October 18 on
6 Plenary 2023, at no point did anyone ever say, from
7 J&J, Mr. Conlan, it's outrageous that you have
8 started your own business to try and resolve
9 disputes?

10 A. I would say you have to ask
11 Mr. Conlan. But I can tell you, in my role, the
12 first time I heard about Legacy being involved with
13 talc, to the best of my recollection, was as I
14 described, in Las Vegas on October 17th, 2023.

15 Q. And you talked earlier about the
16 mediation documents were going back and forth. Is
17 there any information -- do you have any facts,
18 whatsoever, other than the fact that Mr. Conlan and
19 Mr. Birchfield were communicating, do you have any
20 information in your possession, custody, or control
21 to establish that they exchanged J&J's confidential
22 information?

23 A. Yeah, as I testified earlier,
24 Mr. Pollock, if you take a look at that privilege
25 log, it has descriptions of what the documents are.

1 And the descriptions are negotiations about claims
2 matrices and other things that were the exact
3 subject of what Mr. Conlan and I worked on together
4 while he was representing J&J.

5 And as I told you, I can tell you
6 this as somebody who does this every day, there is
7 no way to separate what you learned from a client
8 and then suddenly have it magically disappear while
9 you're advising somebody else on a plan that might
10 work for Legacy. It's just not realistic to --

11 Q. So you're saying the facts between 20
12 -- I'm sorry. The facts between 2021 and 2024,
13 completely stale, no additional plaintiffs, no
14 additional change in the legal landscape, no
15 changes, whatsoever, it's the same discussion you
16 were having in 2021 as you were having in 2024
17 regarding J&J talc liability?

18 A. I think you mean 2023, and -- and
19 Mr. Pollock, even though the filed claim numbers
20 have increased, those claims already existed. They
21 were just unfiled. I mean, it literally is the same
22 thing we were doing back when Mr. Conlan was
23 engaged. Nothing has changed. He had insight into
24 all of my strategy, all of Erik's strategy, all of
25 Mr. White's strategy, Joe Braunruether's strategy,

1 the J&J executive suite, and everything we were
2 thinking and our strategy to deal with talc.

3 Q. You mentioned when you were
4 testifying on direct that there were multiple
5 matrices. Those were the words you used. And am I
6 correct that there were matrices that you and/or
7 Mr. Conlan prepared, apparently, or discussed; that
8 there were matrices that Andy prepared and
9 discussed; there were matrices proposed by the talc
10 claimants committee. There were all kinds of
11 matrices flying all around. Is that true?

12 A. Well, no, there weren't all kinds of
13 them. There were three specifically that I
14 remember. There was one created by Mr. Birchfield,
15 there was one created by myself and my partner
16 Kendra Lounsberry, and there was one created by the
17 Imerys tort claimants committee through their
18 proposed trust distribution procedures.

19 Those are the three that we were
20 discussing at the time.

21 Q. And those matrices changed over time
22 as the numbers changed, right?

23 A. They don't change over time as the
24 number change. They -- there were different
25 concepts as to what category should things be broken

1 down into, and what values, and what claims are we
2 going to value or not value at all.

3 Q. And you have in the -- in this
4 matter, did you review the filing that was made to
5 disqualify Mr. Birchfield before it was filed? Did
6 you review these documents?

7 MR. BRODY: Your Honor, sorry, but
8 asking J&J's outside counsel whether he reviewed
9 something and was involved in the work product that
10 went into a brief, I think is, one, protected by
11 work product; and two, it's completely irrelevant to
12 the issue that we're talking about here.

13 THE COURT: Well, I think the
14 response is, if he reviewed it, yes or no. That's
15 not a work product --

16 MR. BRODY: Fine. Yes or no, I
17 think, is fine. I agree with that, Your Honor.

18 BY MR. BRODY:

19 Q. So, yes or no, did you review the
20 filing before it was made?

21 A. Unfortunately, Your Honor, I can't
22 give a yes or no. I honestly can't remember. It's
23 possible. I'm not sure.

24 Q. Excellent.

25 The Legacy Liability portion, which

1 is Exhibit 7, has a matrix at the end.

2 A. Yes.

3 Q. I'll wait until you're there,
4 Mr. Haas -- Mr. Murdica. Murdica. I'll get it
5 right by the end of your testimony.

6 A. No worries.

7 Q. By the end -- with regard to that
8 chart --

9 A. Yes.

10 Q. -- do you know if that was a J&J
11 document? Did J&J prepare this document?

12 A. Originally?

13 Q. No. This document, the one right
14 here. The one that's Plenary Hearing 67. That's
15 the only one I care about.

16 A. So I --

17 Q. Was that one prepared by J&J?

18 A. I created a matrix in 2020 that looks
19 identical to this, but for the values.

20 Q. Okay. So the values matter. This
21 document, with these values, at this number, am I
22 correct this is not a J&J document; this document?

23 A. I can't answer it better than I did.
24 This -- to the best of my recollection, I have seen
25 these -- this -- the column at the top, that's Stage

1 IV, Stage III with Recurrence, that and the age
2 groups, it's something I originally worked on with
3 Mr. Birchfield. But we created a matrix just like
4 this. This very well may be what we were using back
5 in 2020 that Mr. Conlan weighed in on.

6 Q. So a Honda looks a lot like a Ford.
7 They both have four wheels, they have doors, they
8 have windows, they have an engine, they have
9 everything. I want to know, is this document a J&J
10 -- not some variation. I want to know if this
11 document, the one that they're complaining about so
12 bitterly -- you heard Mr. Haas -- I got it right
13 this time -- complain bitterly that that was a
14 privileged and confidential, super secret
15 information.

16 I want to know under oath, sir, is
17 that document, the one specifically right in front
18 of you, is that a J&J document?

19 A. So, Mr. Pollock, I think what you
20 heard is that everything that Mr. Conlan learned
21 about the way we view a matrix like this for talc is
22 what's problematic that is being shared. I can't
23 tell you for certain that this was our document. I
24 know it's not our values. But I -- what I would
25 suggest, and I guess we'll get to hear from them, is

1 I would ask Mr. Birchfield and Mr. Conlan how this
2 document came together, because it certainly has the
3 same categories as the ones that we were negotiating
4 back in 2020.

5 Q. So let's talk about that. During
6 Imerys and during LTL, didn't all the charts pretty
7 much have the same things: How old are you, what
8 kind of condition do you got, and what are the
9 numbers we're starting to play with. Right? Isn't
10 every -- you've done, I don't know, Phen Fen,
11 vaginal mesh, I don't know what else you have done.
12 Doesn't every matrix look like the same thing? You
13 look at age group, you look at what the exposure is,
14 you look at the risk factors, you look at, you know,
15 whether they can have children or not, and you
16 create a matrix.

17 They really -- I don't think it's
18 rocket science. So I'm trying to figure out what is
19 unique about this chart that is so privileged to
20 J&J?

21 A. Well, Mr. Pollock, first of all,
22 every tort is different. And so I have never
23 settled a tort with a matrix that looks like this
24 before.

25 Q. Okay.

1 A. And I have settled over 30. Okay?

2 So that -- that premise I can't agree with.

3 What's concerning about this to me as
4 resolution counsel is that it was generated, if I
5 had to guess, from our document. Or, if not, from
6 negotiations between Mr. Conlan and Mr. Birchfield
7 using a Birchfield document. I guess we'll find out
8 when they testify.

9 But the fact that our counsel who had
10 all of the information about the way we view this is
11 then proposing this back to us, now sitting on the
12 other side with our adversary, it certainly
13 concerned me, and I could understand why it
14 concerned J&J.

15 Q. "Sitting on the other side with our
16 adversary." This is Jim Conlan's document. It is
17 Legacy's document. Where does it say anywhere that
18 Andy Birchfield crafted this document? Show me.
19 This is important to me, sir.

20 A. I hear your testimony --

21 Q. I want to know. Show me where it
22 says that Andy Birchfield had some role in this.

23 A. I hear your testimony that it's
24 Mr. Conlan's document. I haven't heard that under
25 oath. If Mr. Conlan created this, then he created

1 it from our -- from J&J's document.

2 Q. No. I'll be crystal clear and be
3 fair to you, Mr. Murdica. This letter from Legacy
4 Solutions on November 9, 2023, signed by Mr. Conlan,
5 I guess it's a stamp signature on Plenary 66, is
6 Mr. Conlan's letter. No doubt about it. There's a
7 chart attached. I have no idea who created it. The
8 question is, do you?

9 A. Well, I don't, but I'm surprised you
10 don't. And I'm telling you, this contains J&J's
11 confidential thinking. There's no question in my
12 mind. And the fact that you don't know who created
13 it as the counsel tells me that you know where it
14 really came from, and it came from us.

15 Q. Well, let me ask --

16 A. Through the confidential relationship
17 with Mr. Conlan.

18 Q. Let me ask you this: With regard to
19 the confidential information, tell me everything in
20 here that is super secret confidential J&J
21 information. Here it is, Plenary 67. What exactly
22 in it is so secret?

23 A. If you want me to go through the
24 whole thing, I can.

25 Q. I want you to go through this

1 document on Plenary 67. What -- you just said this
2 contains J&J's confidential information. I didn't
3 think it was a J&J document, but if it is, I would
4 like to know what in it was J&J's confidential
5 information.

6 A. Mr. Pollock, this exhibit, I guess at
7 this point only you probably know where it came
8 from. But I can tell you that J&J had a version
9 that is very similar to this, that was shared with
10 Mr. Conlan, that was debated with Mr. Conlan, it was
11 part of our privileged, highly-confidential
12 strategic discussions about talc resolution.

13 The fact that for six months
14 plaintiffs were negotiating or talking to
15 Mr. Conlan, nobody disclosed it to us, it was
16 allegedly part of the talc mediation that I was in
17 charge of, that nobody ever told me or the mediators
18 about, and then it gets proposed to us.

19 Well, everybody knows because
20 Mr. Haas announced it at an investor meeting that we
21 were working on another plan, and this is contrary
22 to it by the objectors, is extremely concerning and
23 it doesn't take a rocket scientist to see the
24 problem with that.

25 Q. So which number on here? There's a

1 million dollars, 822,000, there's Death Stage IV,
2 Death Stage III. Which column, which words are
3 J&J's? Which did they create?

4 A. I could tell you that if I went back
5 and looked at our matrix, but I believe the first
6 column of the age divisions, the under 45, all the
7 way down to 80-plus, and the different -- the top
8 column breaking the cancers down into different
9 stages, and I'm guessing the inter-relational values
10 between the numbers, in proportion. Even though the
11 numbers are not the same, the number proportions may
12 be the same as our internal thinking on this.

13 Q. Was the one million in the top
14 left-hand corner, was that a J&J number?

15 A. What I'm telling you is, no, it
16 wasn't, but proportionally to the other numbers in
17 the other columns and the way they relate to each
18 other percentage-wise, it looks the same as what I
19 created back in 2020 when I was working with
20 Mr. Conlan and we were internally trying to figure
21 out the way we view this.

22 And if I went back to the chart, if I
23 went to my email now and I looked it up and I did
24 some math calculations, this may include our
25 proportions from our own sampling of plaintiffs'

1 claims and our own view of it, which, again, would
2 be extremely concerning.

3 Q. Mr. Murdica, it may include a lot of
4 things. I want to know for a fact what does it
5 include. Under oath today, what information here --
6 you mentioned the first column, that it has J&J's
7 time groups -- age groups, correct?

8 A. I can't answer the question any
9 better, Mr. Pollock. I'm more concerned about this
10 now than I was when I came up here.

11 Q. Wonderful. I'm trying to --
12 Mr. Murdica, I really want to know one thing. You
13 said it has J&J's confidential information. I want
14 to know, for the last time, what precisely was
15 confidential J&J information.

16 MR. BRODY: Your Honor, this has been
17 asked and answered I think three times already now.

18 MR. POLLOCK: I haven't gotten an
19 answer yet, Judge.

20 MR. BRODY: Mr. Murdica has even
21 stated that he's answered the question as best he
22 can.

23 THE COURT: I heard an answer.
24 Judge Singh?

25 MR. POLLOCK: Fair enough. I'll move

1 on.

2 Actually, Your Honor, I have no
3 further questions. Thank you.

4 THE COURT: You're welcome.

5 UNIDENTIFIED: Mr. Birchfield, pardon
6 me.

7 THE COURT: Excuse me. You're a
8 spectator, and it's your attorney. I don't want
9 anymore interruptions. You can have a seat.

10 UNIDENTIFIED: May I pass him a note,
11 Judge?

12 THE COURT: You can pass notes, and
13 you've passed several notes. Thank you.

14 Mr. Brody.

15 MR. BRODY: Thank you, Your Honor.

16 - - -

17 REDIRECT EXAMINATION

18 BY MR. BRODY:

19 Q. So, Mr. Mordica, I just want to ask
20 you very few questions here on redirect.

21 You were asked a number of questions
22 about what's in your binder at tab 4, if you can
23 turn to that.

24 A. Yes.

25 Q. Are you there?

1 A. Yes.

2 Q. And you were directed to the
3 communications that predated October 18th, 2023.

4 Do you recall those questions?

5 A. I do.

6 Q. And you were asked, Well, at that
7 time, at the time that these communications
8 predating October 18th, 2023 were going back and
9 forth, well, no one at J&J called the ethics
10 committee, was the question you were asked, right?

11 A. Right.

12 Q. At that point in time, prior to
13 October 18th, 2023, when these communications were
14 being made, did you know that Mr. Birchfield was
15 involved in Mr. Conlan proposal?

16 A. I had no idea.

17 Q. Do you know -- did anybody at J&J
18 ever tell you that they knew, at that point in time,
19 that Mr. Birchfield was involved?

20 A. No. And I heard Mr. Haas' testimony
21 that he had no idea.

22 Q. All right. And so, at that point in
23 time, would there have been any reason for J&J to be
24 concerned about Mr. Conlan sharing confidences with
25 Mr. Birchfield?

1 A. There would be no reason to think
2 that that was happening.

3 Q. If you turn to the first page of that
4 document.

5 A. Yes.

6 Q. You know, you were asked a series of
7 questions relatedly about the settlement matrix,
8 which is appended to what we have as Hearing
9 Exhibit 7, right?

10 A. Right.

11 Q. And if you look at the first page of
12 the email that's Exhibit 4, it says, "Andy
13 Birchfield, Doug Dachille, and I are prepared to
14 meet with you and your team in person to share and
15 discuss the terms of such matrix as part of the
16 Legacy acquisition."

17 And does that suggest to you that
18 this settlement matrix is something that had been
19 discussed with Mr. Birchfield?

20 A. It does.

21 Q. As to the settlement matrix,
22 itself -- excuse me, the water is not helping here.

23 Turning to the settlement matrix,
24 itself, when you were working with Mr. Conlan, when
25 he was outside counsel for Johnson & Johnson, was he

1 involved in privileged and confidential discussions
2 of the types of talc claims that might be considered
3 as viable for settlement purposes?

4 A. Mr. Conlan was involved in all of the
5 settlement discussions, including an evaluation of
6 Mr. Birchfield's proposal, which included all of
7 these things.

8 Q. And was he involved in privileged and
9 confidential discussion of what the company viewed
10 as the correct, appropriate categories of claims for
11 purposes of settlement?

12 A. Like I -- like I said, he was
13 involved in evaluation of every aspect of the plan.

14 Q. And I don't want to limit it to a
15 negotiated settlement, but just the -- the
16 categories of claims that should be part of a
17 resolution, speaking more broadly, whatever that
18 resolution was of the talc claims?

19 A. He would necessarily be, he had to
20 be, because it was part of dealing with the future
21 claims representative and evaluating the plan.

22 Q. Was he involved in privileged and
23 confidential discussions of how the company thought
24 values in a settlement matrix like this should
25 translate into an overall resolution number?

1 A. Yes.

2 Q. And was he involved in privileged and
3 confidential discussions of what the company
4 believed the values of the different types of claims
5 that appear on a matrix like this should be for
6 purposes of settlement?

7 A. The settlement matrix originally
8 proposed by Mr. Birchfield was part of the plan that
9 Mr. Conlan and I were negotiating, so all of it was
10 included in that.

11 Q. And was he specifically involved in
12 privileged and confidential discussions of how -- of
13 what J&J believed different values should be for
14 purposes of a resolution of the talc claims?

15 A. He was involved specifically in the
16 amount of claimants we expected in the present and
17 the future; and, hence, the way that translated into
18 the values in that grid.

19 Q. And was that -- was that information
20 that you considered to be privileged and
21 confidential?

22 A. Of course.

23 Q. Would you ever share the information
24 that was discussed internally when talking about how
25 the company thought values should translate into the

1 aggregate amount, values on a settlement matrix
2 should translate into the aggregate amount of a
3 resolution, the categories of claims that should be
4 part of a resolution, what types of claims should be
5 deemed as viable claims for purposes of a
6 resolution, and the values of individual types of
7 claims for purposes of a resolution, all of that
8 privileged and confidential analysis, is that
9 something that you would ever share with opposing
10 counsel?

11 A. No. All I would share with opposing
12 counsel on those fronts is something final that we
13 were willing to agree to that would be our proposal.
14 Not our internal deliberations and what we thought
15 about things, of course.

16 MR. BRODY: Thank you, Mr. Murdica.
17 That's all I have.

18 THE COURT: Mr. Pollock?

19 MR. POLLOCK: On certain redirect,
20 Your Honor.

21 - - -

22 RECROSS EXAMINATION

23 BY MR. POLLOCK:

24 Q. You're resolution counsel for J&J,
25 right?

1 A. Yes, sir.

2 Q. And in that capacity, you had
3 discussions that were confidential on settlement
4 communications with Mr. Birchfield, right?

5 A. I did.

6 Q. And you would not disclose those
7 confidential communications because you were going
8 to honor the confidentiality provision, correct?

9 A. I was forced to disclose some of them
10 in the bankruptcy because of Mr. Birchfield and his
11 colleagues' own motions to force me to, and to
12 depose me.

13 Q. Okay.

14 A. But no, I -- up until then, I always
15 kept every settlement conversation confidential.

16 Q. Excellent.

17 So, and I don't know if you even know
18 about the other ones, so I'm going to let it go for
19 now. I'm just going to stick with the general rule
20 that you would abide by the -- your word that you
21 would keep settlement communications confidential,
22 right?

23 A. Yes, sir.

24 Q. Excellent.

25 If that's true, why is it not

1 possible for Mr. Conlan, who is in the business
2 capacity of trying to buy out liabilities to keep --
3 to partition himself and keep those things
4 confidential when he works for Legacy Liability
5 Solutions?

6 A. Because when you learn client
7 confidences and then you go do something in the same
8 tort, on the same matter, you can't partition in
9 your mind everything that you learned.

10 Q. But you did that with Andy.

11 A. I didn't do that with Andy.

12 Q. You learned -- you learned things
13 that were confidential regarding settlement
14 communications with him; and yet, you said, I'm
15 going to keep this confidential, I'm not going to
16 disclose it to anybody else. You could do that,
17 right?

18 A. I'm working on the side -- I'm still
19 in the same role I was always in, working on the
20 same side, in the same tort. And unfortunately, as
21 I pointed out, Mr. Pollock, Mr. Birchfield forced me
22 to disclose confidential communications in this tort
23 by noticing my deposition and having me deposed by
24 eight different lawyers, twice.

25 Q. With regard to the Exhibit 7, if we

1 could go back to that for one moment, Plenary
2 Hearing 67, and we're almost done with this one, I
3 promise you. Let me know when you're ready, sir.
4 It's Exhibit 7, Plenary 67.

5 A. Okay.

6 Q. Tell me when you're ready.

7 A. I have it.

8 Q. Excellent.

9 So, it's your testimony that this is
10 not a document Mr. Conlan prepared, correct?

11 MR. BRODY: Objection, Your Honor.
12 That's outside the scope of my redirect.

13 THE COURT: Mr. Pollock?

14 MR. POLLOCK: Your Honor, discovery
15 questioning has been pretty broad all day. I've got
16 three more questions, and I'm done.

17 THE COURT: I'll permit you to ask
18 that question. It's not a different topic. It's
19 certainly not a topic that was addressed by
20 Mr. Brody.

21 Go ahead, Mr. Murdica.

22 MR. POLLOCK: You whacked me with the
23 rule book.

24 BY MR. POLLOCK:

25 Q. But let me ask you this. Is it fair

1 to say that you -- are you saying this is not a
2 document Mr. Conlan prepared?

3 A. I am not saying that. You originally
4 seemed to suggest that it was a document Mr. Conlan
5 prepared, then you said you don't know who prepared
6 it, and I'm suggesting that you should ask your
7 client who prepared it. But, to me, it looks like a
8 J&J settlement matrix that I created in 2020,
9 internally.

10 Q. Okay. So it's a J&J document, not a
11 Mr. Conlan document?

12 A. I can't tell you that for sure. The
13 only way I could do it would be to take this and
14 compare it to what's in my email from the fall of
15 2020 and tell you.

16 But, like I said, I'm more concerned
17 about this now than I was before you started asking
18 me about it, because now I have some real questions
19 about whether or not this was our document.

20 Q. Fair enough. Last question, and I'll
21 leave you be at this time.

22 Are you -- oh, I'm sorry. With
23 regard -- there was a grid. Are you familiar with
24 the LTL 2 filing?

25 A. The LTL 2 initial filing with the

1 support of the 60,000 claimants counsel.

2 Q. Yes, sir. And there was a grid
3 attached to that filing, and it looked a lot like
4 Plenary Exhibit 67, didn't it?

5 A. I couldn't tell you. Do you have it?

6 Q. So, I don't have it in front of me.
7 But have you reviewed it, or not?

8 A. I don't think so. I'm not sure what
9 you're referring to, and I can't remember. It was a
10 year ago.

11 Q. Let me put it differently. If
12 Plenary Exhibit 67 looks a lot like the grid that
13 was attached in the LTL 2 filings, which I represent
14 to you it does, any reason to believe this is a
15 super secret J&J filing that they just published it
16 on the bankruptcy court docket?

17 A. Sir, unless you show it to me, I have
18 no idea what you're talking about. I don't recall a
19 grid, and I can't compare it. It's kind of like I
20 would like to be able to compare that exhibit now to
21 the grid we created internally to one Mr. Birchfield
22 sent me as a proposal. There's a lot of things I'd
23 like to do with that now, and I have no idea what
24 you're talking about.

25 Q. Fair enough, sir. Last question and

1 I will leave you be.

2 Were you aware that it was the
3 mediators in the LTL 2 -- the LTL matter that
4 requested that Mr. Conlan participate?

5 A. Mr. Conlan never participated in a
6 mediation, to my knowledge. The first time I
7 learned that Mr. Conlan was allegedly involved in a
8 mediation was two weeks ago, when we found out that
9 they've been having communications since of April
10 2023. That was the first time.

11 The mediators never told me that he
12 was involved. I have since contacted the mediators,
13 and my understanding is that they didn't know that
14 this was going on, but maybe I'm wrong on that. I
15 certainly never knew, J&J never knew, and we never
16 saw Mr. Conlan at any mediation.

17 Q. So you are -- you cannot answer the
18 question whether the mediators asked that Mr. Conlan
19 participate in trying to reach a resolution; is that
20 correct?

21 A. I suggest you ask them. I don't
22 know.

23 MR. BRODY: Objection, Your Honor.
24 Mr. Murdica just answered that question.

25 THE COURT: Mr. Pollock, one more

1 time.

2 BY MR. POLLOCK:

3 Q. Last question. Am I correct that you
4 cannot answer the question, sir, whether the
5 mediators in LTL asked that Mr. Conlan participate
6 in the mediation process?

7 A. That would be news to me. I suggest
8 you ask the mediators.

9 MR. POLLOCK: Fair enough, sir.

10 Your Honors, I thank you very much.

11 Mr. Murdica, I'll get it right by the
12 end.

13 THE WITNESS: You did.

14 MR. POLLOCK: Thank you for your
15 patience and time.

16 THE WITNESS: Thank you.

17 THE COURT: Thank you, Mr. Pollock.
18 Thank you, Mr. Brody.

19 THE WITNESS: Thank you, Your Honor.

20 THE COURT: Mr. Murdica, you may step
21 down.

22 (Witness excused.)

23 THE COURT: I'm going to ask counsel
24 to meet and confer and give us a few dates and share
25 those dates with us. All right?

1 MR. BRODY: Of course.

2 THE COURT: And Judge Singh and I
3 will collaborate together and we'll merge our
4 calendars with what is available for counsel.

5 Everyone is excused.

6 (Hearing adjourned at 4:34 p.m.)

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